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Report of the Special Rapporteur on the right to development

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the right to development, Saad Alfarargi, pursuant to Council resolution 33/14. The report explores the connection between the right to development and equality, the consequences of inequalities within countries on the enjoyment of the right to development and provides recommendations on contributing to the promotion, protection and fulfilment of the right to development in the context of the implementation of the equality related goals and targets of the 2030 Agenda for Sustainable Development.

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I. Introduction

1. The present report, submitted to the Human Rights Council pursuant to Council resolution 33/14, outlines the activities of the Special Rapporteur on the right to development. The thematic focus of the report is exploring the connection between the right to development and equality, and the consequences of inequalities within countries in the enjoyment of the right to development, and provides recommendations on contributing to the promotion, protection and fulfilment of the right to development in the context of the implementation of the equality-related goals and targets of the 2030 Agenda for Sustainable Development. For the purposes of the present report, the Special Rapporteur will focus on inequalities within countries.

II Activities of the Special Rapporteur

A. Regional consultations on the practical implementation of the right to development

2. In September 2017, the Human Rights Council adopted resolution 36/9, which requested the Special Rapporteur on the right to development to hold consultations with States and regional consultations on the implementation of the right to development. In the light of this mandate, the Special Rapporteur has begun convening a series of regional consultations, to be held throughout 2018–2019. The aim for these consultations is to identify good practices in designing, implementing, monitoring and assessing policies and programmes that contribute to the realization of the right to development in various regions. The consultations will gather together representatives of Member States from the respective region, as well as representatives of United Nations agencies, intergovernmental organizations, academia, civil society and the private sector. The first consultation, for the States from the African group, took place in Addis Ababa (27–29 March 2018). The second consultation, for the States from the Group of Western European and other States and from the Eastern European Group, took place on 11 and 12 June 2018 in Geneva. The Special Rapporteur is planning to hold subsequent consultations for the Latin American and Caribbean Group in October 2018 and for the Asian Group in December 2018. The expected outcome of the consultations is the development of a set of practical guidelines and recommendations drawn from empirical evidence, which will serve as a tool in designing, monitoring and assessing the structures, processes and outcomes of human rights-motivated development policies. They will also promote indicators and measurements that have proven successful in specific contexts.

B. Other activities

3. Resolution 33/14 also requires the Special Rapporteur to contribute to the work of the Working Group on the Right to Development, with a view to supporting the accomplishment of its overall mandate, taking into account, inter alia, the deliberations, recommendations and conclusions of the Working Group, while avoiding any duplication. In September 2017, the Special Rapporteur participated in informal consultations with the Chair-Rapporteur of the Working Group, representatives of the participating States and civil society organizations. In April 2018, the Special Rapporteur participated in the nineteenth session of the Working Group, held an interactive dialogue with its members and participated in a panel, making a statement devoted to the right to development and inequalities.

4. In December 2017, the Special Rapporteur delivered a statement at the South-South Human Rights Forum convened by China in Beijing. On 22 and 23 May 2018, he took part in an international expert conference, entitled "Vienna + 25: Building trust, making human rights a reality for all", where he participated in a session on promotion of equality in societies.

III. Inequality — scope and impact

5. The concepts of discrimination, equality and the equitable distribution of the benefits of development, are enshrined in the Declaration on the Right to Development: its preamble declares "equality of opportunity for development is a prerogative both of nations and of individuals who make up nations"; article 2 (3) reaffirms that States have the duty to formulate appropriate national development policies to promote the well-being of the entire population and of all individuals, and to ensure the fair distribution of the benefits resulting therefrom; article 5 refers to a duty of States to "take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as [...] racism and racial discrimination"; article 8 states that the fair distribution of income in the context of "economic and social reforms should be carried out with a view to eradicating all social injustices" and that States "shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income". The reality of today's world is one of growing inequalities, where the rich become richer, while the poor grow in number and are not only deprived of a fair share of the benefits of development, but are increasingly denied participation in decision-making at all levels.

A. International human rights norms

6. The right to equality and the principle of non-discrimination are recognized in all international human rights instruments and nearly all constitutions and basic laws at national level. It is provided for in article 2 of the Universal Declaration of Human Rights and in United Nations human rights instruments, such as articles 2 and 26 of the International Covenant on Civil and Political Rights, article 2 (2) of the International Covenant on Economic, Social and Cultural Rights, article 2 of the Convention on the Rights of the Child, article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and article 5 of the Convention on the Rights of Persons with Disabilities. The Human Rights Committee has defined "discrimination" under the International Covenant on Civil and Political Rights as "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".[1] General comment No. 20 (2009) on non-discrimination in economic, social and cultural rights of the Committee on Economic, Social and Cultural Rights states that discrimination undermines the fulfilment of economic, social and cultural rights (para. 1). It further lists the prohibited grounds for discrimination (race and colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, and economic and social situation) (paras. 15-35). In addition, two of the major United Nations human rights treaties were established explicitly to prohibit discrimination: the International Convention on the Elimination of All Forms of Racial Discrimination (discrimination on the ground of race, colour, descent, or national or ethnic origin) and the Convention on the Elimination of All Forms of Discrimination against Women (discrimination on the ground of sex).

7. The principle of non-discrimination and equal treatment is also contained in regional instruments, such as article 2 of the American Declaration of the Rights and Duties of Man, article 24 of the American Convention on Human Rights and articles 2 and 3 of the African Charter on Human and Peoples' Rights. Despite the fact that the principle of non-discrimination is contained in all human rights instruments, only a few instruments expressly provide a definition of non-discrimination: article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, article 2 of

[1] General comment No. 18 (1989) on non-discrimination, para. 7.

the Convention on the Rights of Persons with Disabilities, article 1 (1) of the International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and article 1 (1) of the Convention against Discrimination in Education.

8. Human rights instruments prohibit discrimination on several grounds. Article 2 of the Universal Declaration of Human Rights prohibits discrimination on the following 10 grounds: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The same prohibited grounds are included in article 2 of the International Covenant on Economic, Social and Cultural Rights and article 2 of the International Covenant on Civil and Political Rights. The grounds enumerated in these provisions are not exhaustive — some grounds not explicitly mentioned have also been considered prohibited grounds in jurisprudence.

9. The general principle of equality and non-discrimination is a fundamental element of international human rights law and, in certain circumstances, it can require a State to take affirmative action in order to diminish or eliminate conditions that cause or help to perpetuate discrimination. The Human Rights Committee has clearly stated this obligation in its general comment No. 18 (1989) on non-discrimination (para. 10). The Committee on Economic, Social and Cultural Rights frequently refers to the duty to take affirmative action in its concluding observations. In its general comment No. 23 (2016) on the right to just and favourable conditions of work, for example, the Committee suggests that States parties should introduce quotas or other temporary special measures to enable women and other members of groups that have experienced discrimination to reach high-level posts and provide incentives for the private sector to do so (para. 61); general comment No. 20 explicitly states that, "in order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination" (para. 9). These internationally recognized principles serve as basis of and are reflected in the 2030 Agenda, as described below.

B. Income inequality

10. When discussing inequality in the context of development, income inequality is often at the forefront of the discussions. It is well documented that income inequality is on the rise. According to some reports, 82 per cent of all wealth created in 2017 went to the top 1 per cent, while the bottom 50 per cent saw no increase at all.[2] The United States has the highest rate of income inequality among the high-income countries.[3] Despite its overall wealth, the countries of the European Union still face high levels of income poverty. According to a Eurostat report, in 2015, 119 million people (or 23.8 per cent of the population of the European Union) were at risk of poverty or social exclusion.[4] In other countries in the Organization for Economic Cooperation and Development (OECD), income inequality is at its highest level for the past half century. The average income of the richest 10 per cent of the population is about nine times that of the poorest 10 per cent across OECD. In OECD countries, traditionally income inequality was greatly reduced through redistribution (through taxes and unemployment and other benefits). However, the financial crisis and the recent years of slow economic recovery weakened the cushioning effect of taxes and benefits, accelerating the overall upwards trend in income inequality.[5] In emerging economies, levels of inequality are generally even higher than in OECD

[2] Oxfam, "Reward work, not wealth", p. 8. Available at https://d1tn3vj7xz9fdh.cloudfront.net/s3fs-public/file_attachments/bp-reward-work-not-wealth-220118-en.pdf.

[3] See World Income Inequality Database, www.wider.unu.edu/project/wiid-world-income-inequality-database.

[4] Eurostat, "Sustainable development in the European Union: Monitoring report on progress towards the SDGs in an European Union context" (2017), p. 29. Available at http://ec.europa.eu/eurostat/documents/3217494/8461633/KS-04-17-780-EN-N.pdf.

[5] OECD, "In it together: Why less inequality benefits all", p. 24. Available at www.oecd.org/els/soc/OECD2015-In-It-Together-Chapter1-Overview-Inequality.pdf.

countries.[6] This is exemplified in Brazil, Chile, Mexico and Turkey, countries that have managed to reduce inequality, even though the gap between the richest and the poor is still about five times bigger than the gap in the OECD countries.[7] According to the United Nations Development Programme (UNDP), by 2014, more than 75 per cent of the population of developing countries lived in societies with a more unequal income distribution than they had in the 1990s; averages of within-country income inequality showed that income inequality had risen by 9 per cent in developed countries and 11 per cent in developing countries.[8]

11. Why does income inequality matter? The International Monetary Fund has argued that "widening income inequality is the defining challenge of our time", with the gap between rich and poor at its highest level for decades in the advanced developing economies.[9] According to OECD, the long-term increase in income inequality not only raises social and political concerns, but tends to reduce GDP growth; people with a lower income are prevented from realizing their human capital potential, which is bad for the entire economy.[10] Analysis by UNDP shows that high inequality undermines development by hindering economic progress, weakening democratic life and threatening social cohesion.[11] For example, income inequality appears to be a particularly significant determinant of inequality in health outcomes; 87 per cent of variation in the ratio of under-5 mortality rates between the richest and lowest quintiles could be attributable to variations in income/wealth inequality.[12]

12. Countless examples can be provided from research and practice, showing that income inequality leads to exacerbating poverty and affects not only enjoyment of economic and social rights, but also infringement of civil and political rights. The World Bank has argued[13] that when societies have high levels of inequality, such inequalities are reflected in the unequal capacity of groups to influence the policymaking process, making inequality more persistent, and that "inequality traps are a vicious cycle in which a high concentration of wealth translates into a disproportionate ability of those at the top of the distribution to influence the policy process in their favour and weakens the perception of fairness of those at the bottom of the distribution". It also argued that, in addition to normative concerns, a more equitable distribution of income is associated with positive outcomes, including stability and economic growth.[14] The World Bank further concluded that, in the long run, "inequality and growth are thus tightly linked, and the way in which the benefits from growth translate into socioeconomic achievements across different individuals and groups is determined by how actors interact and make policy decisions about redistribution".[15] This conclusion fits with ensuring effective participation in decision-making processes as outlined in article 8 (2) of the Declaration on the Right to Development, which calls on States to encourage popular participation in all spheres as an important factor in development and the full realization of all human rights.

[6] Ibid., p. 23.

[7] See www.oecd.org/social/inequality.htm.

[8] UNDP, *Humanity Divided: Confronting Inequality in Developing Countries* (2013), pp. 3 and 7. Available at www.undp.org/content/dam/undp/library/Poverty%20Reduction/Inclusive%20development/Humanity%20Divided/HumanityDivided_Full-Report.pdf.

[9] Era Dabla-Norris and others, "Causes and consequences of income inequality: a global perspective", International Monetary Fund staff discussion note SDN/15/13 (2015), p. 4.

[10] OECD, "In it together", overview.

[11] UNDP, *Humanity Divided*, p. 3.

[12] Ibid, table 4.11 and p. 145.

[13] World Bank Group, *World Development Report 2017: Governance and the Law*, pp. 10 and 32. Available from http://documents.worldbank.org/curated/en/774441485783404216/Main-report.

[14] Ibid., p. 45.

[15] Ibid., p. 167.

C. Other forms of inequality

1. Sex -based discrimination

13. The Secretary-General, in his report on progress towards the Sustainable Development Goals (E/2017/66), found that sustainable development cannot be achieved without the full inclusion and effective and equal participation of women. The report notes that: that women's participation in single or lower houses of national parliaments reached 23.4 per cent in 2017, just 10 percentage points higher than in 2000; women are still underrepresented in managerial positions — in the majority of the 67 countries with data from 2009 to 2015, fewer than a third of senior- and middle-management positions were held by women; the average amount of time spent on unpaid domestic and care work is more than threefold higher for women than men, according to survey data from 83 countries and areas; and just 52 per cent of women between 15 and 49 years of age who are married or in union make their own decisions about consensual sexual relations and use of contraceptives and health services (ibid., para. 9). The World Economic Forum reported that, in 2017, the gaps between women and men in economic participation and political empowerment remained wide: only 58 per cent of the economic participation gap had been closed and about 23 per cent of the political gap was unchanged since 2016; an average gap of 32 per cent remained to be closed in order to achieve universal gender parity.[16] The gender pay gap varies from 1.8 per cent of the male median wage (Costa Rica) to 36.7 per cent of the male median wage (Republic of Korea).[17] Yet only one country to date (Iceland) has passed legislation explicitly outlawing unequal pay between men and women.[18] Women's rights to participate in, contribute to and enjoy economic, social, cultural and political development are infringed upon by the inequalities they face in every area of their lives.

14. With regard to accountability mechanisms, women are underrepresented in virtually every international body responsible for adjudicating, monitoring and developing international law. As of June 2018, only 3 of the 15 judges on the International Court of Justice were women, 6 of 18 judges of the International Criminal Court were women and the International Tribunal for the Law of the Sea had 21 judges, only 3 of whom were women. Additionally, women comprise no more than 30 per cent of the aggregate of the members of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee against Torture. As of June 2018, 33 of the 79 special procedures mandate holders were women. The situation is not better in national court systems. For example, in 2014, in the Supreme Court of Spain, out of 70 judges, only 12 were women; there were no women presidents in the chambers of the Audiencia Nacional (National Court); and only 6 out of 52 presidents in the High Courts of Justice were women (A/HRC/29/40/Add.3, para. 86). In Senegal in 2010, women accounted for only 17.29 per cent of judicial personnel and there were no women among the five members of the Constitutional Council (A/HRC/32/44/Add.1, para. 62). In Kuwait, in 2016, there was not a single woman among the judiciary (A/HRC/35/29/Add.2, para. 66).

2. Discrimination against other population groups

15. Inequality disproportionally affects many other groups (e.g. discrimination on the basis of race, ethnicity, religion, age, disability etc.). Persons with disabilities, for example, experience higher rates of poverty, lower educational achievements, poorer health outcomes, less legal protection and less political and cultural participation. In the European Union for example, in 2015, 30.2 per cent of the population aged 16 or more who had a

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[16] World Economic Forum, *The Global Gender Gap Report 2017* (2017), pp. 7–8. Available at www3.weforum.org/docs/WEF_GGGR_2017.pdf.

[17] OECD data (figures for 2016), https://data.oecd.org/earnwage/gender-wage-gap.htm.

[18] On 1 June 2017, the Icelandic Parliament adopted a law making it mandatory for all firms and institutions with 25 or more employees to obtain "Pay Equality Certification" (*Jafnlaunavottun*). The new provision entered into force on 1 January 2018. Professional certifiers will conduct reviews and deliver reports to the public Centre for Gender Equality (*Jafnréttisstofa*). See "Iceland: Equal pay certification legalised", ESPN Flash Report 2017/55.

disability were at risk of poverty or social exclusion, compared with 20.8 per cent of those with no disability.[19] Children with disabilities are less likely to attend school, which reduces their chances for future employment opportunities. Persons with disabilities are more likely to be unemployed and earn less even when they are employed; microfinance institutions are often unwilling to lend to persons with disabilities.[20]

16. A survey conducted in one European country in 2013[21] on health inequalities between the general population and the Roma minority showed that, with regard to mortality, the average age at death in surveyed households was some 52 years old for the Roma sample, and over 68 years for the general population. In relation to the survival time following diagnoses of an illness, 29 per cent of respondents in the Roma sample survived less than one year, versus 17 per cent in the general population. The survey also showed that Roma faced greater obstacles and difficulties in accessing health care and paying for medication: 11 per cent of Roma respondents reported that within the last year they had needed health care but not got it, in comparison with 5 per cent of the general population. A total of 72 per cent of Roma stated that they could not afford the cost of a medical examination (compared with 56 per cent of respondents in the general population), while 48 per cent also stated that they could not afford the cost of transport (compared with 31 per cent of the general population). In addition, 41 per cent did not have medical insurance (compared with 33 per cent of the general population). Roma were also more likely to delay buying medication or take less of the medication prescribed in order to save money. In relation to specific medical conditions, while 100 per cent of the general population who had been diagnosed with either tuberculosis or pneumonia reported receiving treatment, those figures fell to 89 per cent of Roma diagnosed with pneumonia and 95 per cent of those diagnosed with tuberculosis.

17. Many people are affected by multiple and intersecting forms of discrimination, i.e., are discriminated against on more than one ground.[22] Among others, people from particular ethnicities, castes and minorities, indigenous peoples, migrants, refugees, stateless and displaced persons, children, youth, women, older persons, slum dwellers and persons living with HIV/AIDS are often excluded, disempowered and discriminated against, in law, policy and practice, resulting in inequalities in both opportunities and outcomes.[23] Discrimination based on poverty is another, less widely recognized type of inequality. According to the International Monetary Fund, in many countries, low-income households and small-scale firms often face challenges in accessing health services and education, but also basic financial services due to lack of financial knowledge, complicated processes, onerous paperwork, and other market failures. Moreover, available financial products tend to be more limited and relatively costly.[24] The most recent ILO *Global Wage Report*[25] highlighted that discrimination and wage penalties suffered by women, migrant workers and workers in the informal economy (who are often from disadvantaged groups) contribute to income inequality.

18. According to Eurostat, in the European Union in 2015, 34.3 per cent of people with at most lower secondary educational attainment were at risk of poverty or social exclusion, while only 11.7 per cent of those with tertiary education were in the same situation. Similarly, in 2015, 68.2 per cent of the young children (aged 0–6) of parents who had at most pre-primary and lower secondary education were at risk of poverty or social exclusion. This was over six times higher than for children of parents with first- or second-stage

[19] Eurostat, "Sustainable development in the European Union", pp. 34–35.

[20] UNDP, *Humanity Divided*, box 4.1. entitled "Inequality and people with disabilities", p. 144.

[21] European Roma Rights Centre, "Hidden health crisis: Health inequalities and disaggregated data", pp. 15-19. Available at www.errc.org/uploads/upload_en/file/hidden-health-crisis-31-october-2013.pdf.

[22] See, for example, Human Rights Council resolution 32/17.

[23] United Nations System Chief Executives Board for Coordination, *Leaving no one behind: Equality and Non-Discrimination at the Heart of Sustainable Development: A Shared United Nations System Framework for Action* (United Nations, New York, 2017), p. 18.

[24] Dabla-Norris and others, "Causes and consequences of income inequality", pp. 16-18.

[25] See ILO, *Global wage report 2016/2017*. Available at www.ilo.org/global/research/global-reports/global-wage-report/2016/lang--en/index.htm.

tertiary education.[26] Poverty, leading to a lack of access to education, leading to poverty, forms a vicious circle, ultimately resulting in exclusion from development.

19. United Nation agencies[27] have pointed out that widespread inequalities are also evident with regard to the impact of natural disasters and environmental hazards on different populations, resulting in further disadvantaging of people who are already disproportionately dependent on the environment for their livelihoods. Climate instability and extreme weather events tend to have the greatest impact on those with the least resources, including women and girls. Imbalances in access to natural resources are often worsened by insecurity of land tenure, including the lack of recognition of collective tenure for rural communities — affecting indigenous peoples — and of equal inheritance rights and their practical implementation, especially among women.

IV. The right to development, and inequality

20. Why do inequalities matter for the right to development in particular? As demonstrated above, inequality threatens long-term social and economic development and impedes poverty reduction. More notably, inequality has an impact on the ability of individuals and communities to participate in, contribute to and enjoy economic, social, cultural and political development. Inequality is therefore a major obstacle to the realization of the right to development within and across countries.

21. In his fourth report (E/CN.4/2002/WG.18/2), the former Independent Expert on the right to development, discussed the fundamental human rights principles of equality and non-discrimination and their link to the right to development. He concluded that, when the fulfilment of economic, social and cultural rights requires the availability of and access to goods and services, then equality in rights implies equality in accessing these goods and services, i.e. equality of opportunity (ibid., para. 27). He also noted that "equality is essential to any programme aimed at implementing human rights, such as the right to development" and that development policies and measures have to be implemented in a way that either reduces income inequality or, at a minimum, does not allow any increase in inequality (ibid., para. 28). He further emphasized that "there cannot be any discrimination between the agents, the stakeholders and the beneficiaries (the right holders) on any ground" (ibid., para. 29).

22. In the same report, the Independent Expert discussed the relationship between equality and the principle of participation, according to which all beneficiaries and agents involved in the implementation of the right to development are entitled to participate in, contribute to and enjoy the results of the process of development. He concluded that: the principle of participation was concerned with access to decision-making and the exercise of power in the execution of projects that led up to the programme for development; citizens needed to be empowered and have ownership over the programme; and, while there was no unique model of participation, "for each project special provisions have to be drawn up and implemented in order to ensure such participation" (ibid., para. 30).

23. These conclusions resonate very closely with the recommendations put forward during the regional consultations on the practical implementation of the right to development organized by the Special Rapporteur, where participants focused on one overarching theme — namely the importance of establishing meaningful participation of all relevant stakeholders in the decision-making process, including communities, non-governmental and grass-roots organizations, women, youth, minorities, indigenous peoples, persons with disabilities, and other marginalized groups. Participation should be central in all development-related processes, at the local, national and international levels. The call to ensure genuine participation is consistent with the vision contained in the Declaration on the Right to Development, which acknowledges the right of every person and community to

[26] Eurostat, "Sustainable development in the European Union", p. 35.

[27] Technical Support Team, "TST issues brief: Promoting equality, including social equity", pp. 1–2. Available at https://sustainabledevelopment.un.org/content/documents/2406TST%20Issues%20Brief%20on%20Promoting%20Equality_FINAL.pdf.

participate in, contribute to and enjoy development in its economic, social, cultural and political dimensions. This must be the guiding force in the implementation of the post-2015 policy development framework.

24. So how can genuine, wide and meaningful participation be achieved? Overwhelmingly, the response of civil society to that question in consultations with the Special Rapporteur has been: through wider access to information regarding development policies, programmes and projects for all concerned stakeholders and constituencies. Access to information and participation will lead to understanding of the process, and widen support for much needed reforms. Participation will also help in designing, implementing, monitoring and evaluating the results of development programmes and projects in a meaningful way and increasing their effectiveness and efficiency. Last but not least, it would lead to greater accountability and contribute to tackling endemic issues, such as corruption and lack of good governance.

25. In 2015, OECD suggested that reducing the growing divide between rich and poor and restoring opportunities for all required focusing policy attention on four main areas: employment promotion and good-quality jobs; skills and education; tax-and-transfer systems for efficient redistribution; and, notably, women's participation in economic life.[28]

26. ILO[29] suggested as one of the measures to reduce inequalities that: "Sustainable enterprises engage in social dialogue and good industrial relations, such as collective bargaining and worker information, consultation and participation. These are effective instruments to create win-win situations, as they promote shared values, trust and cooperation, and socially responsible behaviour." Measures such as adopting or strengthening minimum wages, as one way of reducing wage inequality, can only be effective if implemented in full consultation with social partners and, where appropriate, "with their direct participation on an equal footing".[30] Principle 18 (b) of the Guiding Principles on Business and Human Rights also requests that, in order to gauge human rights risks, business enterprises should conduct meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

27. The World Bank has argued[31] that participation may also have value by increasing cooperation, through contribution to the funding of projects or through compliance with decisions made, and that increasing the direct representation of disadvantaged individuals in legislative assemblies can promote policymakers' commitment to reforms that improve equity. The Bank has also warned, however, that: participants in civic activities tended to be wealthier, more educated, of higher social status, male, and more politically connected than non-participants; the cost of participation was higher for the poor because they have less leisure time and need to work longer hours to generate income; and it is more difficult for the poor "to influence outcomes because they are less educated or may find it difficult to debate with and contradict individuals who traditionally hold influence and authority".[32] In the context of human rights-compliant development policies and programmes, the way the participation processes are designed is extremely important. Furthermore, the cost of participation should be duly budgeted, so that those who are being consulted do not bear the costs or end up excluded because are unable to afford the participation costs.

28. Access to information and to participatory mechanisms are closely related. The majority of the high-income countries make information about existing regulations publicly available and provide advance notice of regulatory changes. Information regarding State, regional or municipal budgets is available and there are mechanisms for feedback and options to challenge the choices of the executive. Such mechanisms to collect feedback from the public and to report on the results and impact assessments of regulatory policies

[28] OECD, "In it together", p. 22.
[29] ILO, *Global Wage Report 2016/17*, p. xxi.
[30] Ibid., p. 25.
[31] World Bank Group, *World Development Report 2017*, pp. 173 and 178.
[32] Ibid., p. 181.

are relatively uncommon in low- and middle-income countries.[33] While existing systems even in high-income countries need to be further evaluated in terms of accessibility, including for linguistic minorities and for persons with disabilities, providing information about budgets, regulatory changes and programmes in an accessible format and seeking the feedback of beneficiaries are of utmost importance for effective participation and ensuring that no one is left behind.

29. In its *World Development Report 2017*, the World Bank provides multiple examples of cases where increasing the direct representation of women and disadvantaged or minority individuals in legislative assemblies and other political bodies can help to bring about policies that are aligned with the needs of these groups, and how the political representation of disadvantaged groups seems to be effective in reducing poverty.[34] Other examples of effective participation provided are various forms of direct democracy and public deliberations that allow group-based discussion and weighing of alternative preferences, and this can assist in improving the legitimacy of decisions by clarifying the needs and demands of local constituencies.[35] It is argued that public deliberation is most successful at the local level and can complement decentralization reforms.[36]

30. Another crucial precondition to achieving progress towards equality and promoting the right to development is the existence of accessible and effective accountability mechanisms. Providing effective remedies for human rights violations, including discrimination, is a basic obligation of States under international human rights law, which not only recognizes the individual human rights of every human being, but places an obligation on States to ensure, secure or guarantee the effective enjoyment of human rights with its jurisdiction.[37] The Committee on Economic, Social and Cultural Rights has stated in its general comment No. 9 (1998) on the domestic application of the Covenant that, for the Covenant norms to be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place. States have recognized the importance of providing remedies for gender inequalities by electing the indicator of whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex as an indicator for achieving Sustainable Development Goal 5. More recently, principle 29 of the Guiding Principles on Business and Human Rights suggested that business enterprises also need to make it possible for grievances to be addressed early and remedied directly, by establishing or participating in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

V. Right to development and addressing inequalities in the Sustainable Development Goals

31. The 2030 Agenda recognizes "rising inequalities within and among countries", "enormous disparities of opportunity, wealth and power" and persistent "gender inequality" as "immense challenges" confronting the world today. Under the Agenda, a commitment is made to leave no one behind, to ensure targets are met for all nations and peoples and for all segments of society, and to reach the furthest behind first. Consistent with international human rights law, the 2030 Agenda contains a commitment to combating income and wealth inequalities and acknowledges that relative inequalities in income and wealth

[33] Ibid., p. 150, figure 5.6.

[34] Ibid., p. 180.

[35] Ibid., p. 239.

[36] Ibid., pp. 239–240.

[37] See, for example, art. 2 of the International Covenant on Civil and Political Rights, art. 2 of the International Convention on the Elimination of All Forms of Racial Discrimination, art. 2 of the Convention on the Elimination of All Forms of Discrimination against Women, art. 2 of the Convention on the Rights of the Child, art. 1 of the Arab Charter on Human Rights, art. 1 of the Inter-American Convention to Prevent and Punish Torture and art. 1 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

hamper the achievement of development. The commitment to combat inequalities and discrimination is reflected in two goals explicitly focused on this issue. Sustainable Development Goal 5 (Achieve gender equality and empower all women and girls) is the stand-alone goal dedicated to bridging the gap between men and women and addressing gender-based discrimination depriving women and girls of their rights and opportunities and thus of their ability to realize their full potential. Women's equal right to development could in itself be an amplifier of development. However, the realization of their right to development is beset by challenges rooted in the inequalities that pervade their lives. For women, the right to development requires consideration for their lack of voice and participation in decision-making within their families and societies.

32. Sustainable Development Goal 10 (Reducing inequality within and among countries) is the goal designed to address inequalities across the spectrum of development goals. In addition, all other Sustainable Development Goals call for more equitable development and universal access to the constituent elements of development for all people. A commitment to equality is reflected, for example, in target 16 (b), which highlights the need for "non-discriminatory laws and policies for sustainable development" as an essential element of the framework for effective development, or target 4.1 requesting States to ensure that "all girls and boys complete free, equitable and quality primary and secondary education". The 2030 Agenda also contains the commitment to disaggregate data across all goals in order to measure the extent to which its central pledge to leave no one behind has been met.

33. Target 10.3 under Sustainable Development Goal 10 specifically calls on States to ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard. Equality of opportunity typically means that all people are treated equally in the application of law or, for example, when applying for work or in relation to access to education and health care. This concept is not inconsistent with reducing inequalities of wealth or income but, as discussed above, income inequalities may lead to unequal opportunities and discrimination. Inequalities of outcome, however, can be measured on a number of issues: wealth, health, education or income. Policies aimed at reducing inequalities of outcome should have a redistributive focus.

34. To measure the implementation of the Sustainable Development Goals, States agreed on 169 targets and 232 indicators[38] and to a process of voluntary national reviews in the framework of the high-level political forum on sustainable development, convened under the auspices of the Economic and Social Council. States have agreed that, in 2019, the theme of the forum will be "Empowering people and ensuring inclusiveness and equality".

35. The voluntary common reporting guidelines for voluntary national reviews at the high-level political forum[39] suggest that voluntary national reviews should: be open, inclusive, participatory and transparent for all people; support reporting by all relevant stakeholders; be people-centred and gender-sensitive, and respect human rights; and have a particular focus on the poorest, most vulnerable and those furthest behind. They should ideally also include information regarding what mechanisms have been used to engage stakeholders from civil society, academia and the business sector, and how the national report to the high-level political forum has been discussed at the national level and who was engaged in the discussions. The reporting guidelines also suggest that the voluntary national reviews could assess how the principle of leaving no one behind has been mainstreamed in

[38] The global indicator framework for the Sustainable Development Goals, developed by the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, was agreed upon at the forty-eighth session of the Statistical Commission and adopted by the General Assembly in resolution 71/313 of 6 July 2017. The list of indicators is refined annually: it includes the global indicator framework as contained in the resolution and refinements agreed by the Statistical Commission at its forty-ninth session in March 2018 (see E/CN.3/2018/2, annex II). See https://unstats.un.org/sdgs/indicators/Global%20Indicator%20Framework%20after%20refinement_Eng.pdf.

[39] See https://sustainabledevelopment.un.org/content/documents/17346Updated_Voluntary_Guidelines.pdf.

the implementation of the Sustainable Development Goals and how vulnerable groups have been identified, as well as what policies and programmes are being implemented to address their needs and support their empowerment.

36. What has been achieved to address inequalities in the framework of implementation of the Sustainable Development Goals two and a half years after the conclusion of this major international policy agreement? To date, Member States have completed two cycles of voluntary national reviews in which 65 States have participated. In addition, following a call for submissions by the Special Rapporteur, several countries submitted to the mandate holder information on their efforts to reduce inequalities.

37. In 2016, the theme of the high-level political forum was ensuring that no one is left behind, and some countries chose to explicitly address the topic in their voluntary national reviews.[40] Since many of the goals and targets are directly related to the achievement of equality, other countries addressed similar issues in their analysis of the implementation of different goals.

38. With regard to reducing income inequalities, States reported the introduction and use of social protection policies and social security systems, in particular support mechanisms to guarantee the minimum social standards for its most vulnerable citizens, such as social payments to guarantee subsistence income, financial assistance to families with children or mandatory minimum wages for workers.

39. The Government of the Russian Federation reported[41] that equality was one of the basic principles of its legal system and was reflected in legislation regulating human rights in health, education, labour, judicial proceedings, social protection and culture. It further referred to articles 37 and 39 of its Constitution. Groups on which State policy focused were children, persons with disabilities and veterans. The Federal Law on State Social Assistance (Law No. 178-FZ of 17 July 1999) provided for social assistance for different categories of citizens in the form of social benefits, pension top-ups, subsidies and provision of vitally important goods. The government programme "Social support of citizens", established by decree No. 296 of 15 April 2014, provided for social benefits and an increase in social services for the population. Assistance was provided to citizens whose income was below a certain subsistence level defined by the Executive.

40. The Government of Nigeria[42] gave as an example of good practice the process of establishing a social protection policy in Ondo State, conducted in cooperation with the United Nations Children's Fund (UNICEF). From August to October 2016, upon a request from the authorities, UNICEF conducted mapping of social net investment programmes implemented over the years in Ondo State. In November 2016, a state social protection technical working group was established, which reviewed the mapping. Based on the existing programmes and global experience in drafting social investment legislation, the Ministry developed a draft Ondo State Social Net Investment Bill. The draft was reviewed by the technical working group. In December 2017, the Ondo State House of Assembly held a public hearing on the Bill and adopted it. In February 2018, the State Governor signed the Ondo State Social Protection Law 2018. The new law set up a State Social Protection Council to promote equal opportunity, reduce inequalities of outcome and eliminate discriminatory laws, policies and practices. Various stakeholders (farmers, small business owners, artisans of various types, people living with disabilities and the leprosy community) were involved in the development of the policy and, in particular, in the development of a microcredit scheme aimed at reducing inequality.

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[40] Unless indicated otherwise, the information in this section is from Department of Economic and Social Affairs, Division for Sustainable Development, *Synthesis of Voluntary National Reviews 2016*, pp. 58–62 (available at https://sustainabledevelopment.un.org/content/documents/126002016_VNR_Synthesis_Report.pdf) and *Synthesis of Voluntary National Reviews 2017*, pp. 12, 13, 19, 27-32 (available at https://sustainabledevelopment.un.org/content/documents/17109Synthesis_Report_VNRs_2017.pdf). For complete voluntary national reviews, see https://sustainabledevelopment.un.org/vnrs/.

[41] Submission of 6 March 2018.

[42] Submission of 12 March 2018.

41. The Government of Croatia[43] provided detailed information on its social welfare legislation and services, such as the guaranteed minimum benefit introduced by law in 2014 and designed to prevent the occurrence of extreme poverty and prevent social exclusion. Further benefits were available for children with developmental disabilities and adults with disabilities. Croatia also provided information on its Strategy for Combating Poverty and Social Exclusion (2014-2020), addressing homelessness and introducing measures to implement the Convention on the Rights of the Child.

42. The Government of Italy[44] submitted that, during recent years, it had faced a severe economic crisis that had led to the unemployment rate increasing to 12.7 per cent in 2014, which in particular affected young persons. In order to address the challenge of achieving an employment-intensive recovery for its economy, Italy had introduced three main reforms: the so-called Fornero labour market reform, adopted in 2012; the Youth Employment Strategy, which also included the Youth Guarantee National Plan, launched in 2013; and the Jobs Act. In 2017, Italy enshrined for the first time in law a comprehensive national anti-poverty strategy, which included rationalizing social benefits and ensuring coordination between social services. A crucial element of the anti-poverty strategy was the minimum income for inclusion (REI), which provided beneficiaries with an economic benefit paid onto a personal electronic payment card (REI CARD) (up to a maximum of 240 euros per month) and participation in a project to help them find employment.

43. Another group of measures reported by States were initiatives aimed at eradicating discrimination against all groups, and efforts to address issues related to specific groups, such as children and youth, older persons, persons with disabilities, indigenous peoples, women and girls, refugees and internally displaced persons. Many countries listed constitutional and legislative provisions prohibiting discrimination on a number of grounds, including race, gender, sex, pregnancy, disability, age and religion. Some countries had national strategies aiming to ensure equal rights and opportunities, such as policies for persons with disabilities, on Roma inclusion and against racism and hate crimes. A number of countries also provided information on accountability mechanisms and legal avenues to complain against discrimination. However, analysis of the effectiveness of such mechanisms is not available. Such analysis should assess the visibility, accessibility, independence and efficiency of these mechanisms, to determine their usefulness in addressing discrimination.

44. Furthermore, States provided information on participatory mechanisms, either for designing policies to implement the Sustainable Development Goals or drafting voluntary national reviews. Engagement with different stakeholders was noted as an important success factor in the implementation of Sustainable Development Goals by countries such as Egypt, Samoa and Switzerland; and a necessary condition of ensuring ownership of the process by countries including China, Finland and the Philippines. Some countries, such as Madagascar, Sierra Leone and Uganda, reported consultation and meetings occurring in various outlying regions to ensure the widest possible participation. A number of countries (Colombia, Egypt, Estonia, Finland, Georgia, Germany, Madagascar, Mexico, Morocco and Turkey) reported setting up institutional frameworks for sustainable development. For example, in Mexico, the voluntary national review was prepared under the leadership of the Office of the President, which reached out to numerous actors to obtain information and views; government entities were engaged through a specialized technical committee; civil society was involved through working meetings and open dialogues; and the private sector's contributions were made through the Mexican Agency for Cooperation for Development.

45. Estonia has reported that the Estonian Sustainable Development Commission (formed in 1996) was an advisory body consisting of civil society umbrella organizations that covered different fields of sustainable development, including education, environmental protection, culture, children, health, local government, academia, private companies, and agriculture. The Commission met four or five times a year to hold thematic

[43] Submission of 22 February 2018.

[44] Submission of 27 March 2018.

discussions on different sustainable development topics, discuss drafts of sustainable development-related strategic action plans before adoption by the Government and publish focus reports with policy recommendations.

46. Finland has reported that two major multi-stakeholder committees had an integral role in the national system to coordinate, implement and follow up on the Sustainable Development Goals. Membership of the committees was broad, thereby ensuring that the voices of civil society organizations, private sector actors, interest groups and other stakeholders were heard. To improve the policy coherence for sustainable development, collaboration between the two committees has been intensified since the adoption of the 2030 Agenda, for example, through joint meetings, workshops and discussion papers. Finland reported that the programme "The Finland we want by 2050 — Society's commitment to sustainable development" had been launched by the Finnish National Commission on Sustainable Development in order to engage larger segments of the society in the work on sustainable development. "Society's commitment" was a multi-stakeholder operational tool and a partnership model that aimed at boosting ownership, concrete action, innovative solutions and impact in the society. By April 2016, over 240 actors from companies to ministries, schools, municipalities and civil society organizations, as well as individuals, had already joined subscribed to "Society's commitment" by launching their own operational commitments.

47. Madagascar created a committee for guidance and follow-up (composed of representatives of the Prime Minister's Office, the National Assembly, 13 ministries, the United Nations system and the African Union) and a technical committee for implementation of the Sustainable Development Goals, composed of representatives of the United Nations System, technical departments, civil society, the private sector, universities and research centres.

48. In Norway, civil society stakeholders were actively involved and consulted during the post-2015 process, and expressed strong interest in being involved in the implementation of and follow-up to the 2030 Agenda. The Philippines reported on the "SDG Youth National Convergence", which consisted of youth leaders from different sectors committing to working towards the Sustainable Development Goals. During the Rio+20 process, Turkey had set up a "24 best practice examples" programme, for which good practices for implementation of the Sustainable Development Goals were selected based on applications from public institutions, the private sector, civil society and academia. Georgia reported in 2016 that business, civil society and academia were already involved in efforts to advance the Sustainable Development Goals, and that the scope and depth of their engagement would grow as the adjusted priorities and indicators were presented for general review and consultation. Those non-governmental bodies were expected to play a crucial role in offering feedback, policy advice and participating at the central and local levels.

49. In relation to including specific groups in the sustainable development processes, Costa Rica reported that, although progress had been made in recent years, consultations with persons from the lesbian, gay, bisexual, transgender/transsexual, intersex and queer/questioning communities had identified major obstacles to the adequate and real implementation of relevant policies and regulations by the institutional bodies. Specialized units with a human rights approach had been established with a view to providing dignified health care for lesbian, gay, bisexual, transgender/transsexual, intersex and queer/questioning communities. Nepal reported that lesbian, gay, bisexual, transgender/transsexual, intersex and queer/questioning persons represented one of the 23 groups identified for the Sustainable Development Goal discussion forum for civil society.

50. In their reports, countries have considered indigenous peoples both as a group in need of concerted support and as actors engaged in enhanced implementation of the Sustainable Development Goals. In Nepal, the amended Civil Service Act reserved a percentage of public service positions for women and marginalized groups, including dalits, indigenous peoples and persons with disabilities. Malaysia noted that one of its future aims was leveraging indigenous and local communities in the management of natural resources, as well as empowering them to give or withhold consent to proposed projects that could affect their access to land. Chile reported on the specific challenges that its indigenous population had faced, including high multidimensional poverty rates, and that the results of

a consultation process for indigenous peoples had been considered in the preparation of draft legislation for establishing a ministry of indigenous peoples and a council of indigenous people. Norway reported that the indigenous peoples' assembly, the Sámeddigi (Sami Parliament), was involved in the follow-up and review of implementation of the 2030 Agenda, through dialogue with line ministries and formal consultation mechanisms.

51. Countries also reported on institutional mechanisms and policies that had been put in place to enhance gender equality and women and girls' rights. The Government of Bosnia and Herzegovina reported on its national Law on Gender Equality, which created a gender equality agency operating within the Ministry for Human Rights and Refugees, to monitor and examine violations of that law perpetrated by an act or action or failure to act of a body or legal entity, and take action to remedy them in accordance with that law. A software platform was set up to regulate data collection and the processing and exchange of information relating to the monitoring of the human rights situation, and especially the cases of discrimination, under the jurisdiction of the Ministry for Human Rights and Refugees. An integral part of that database was the data on discrimination cases, gathered in accordance with the *Rulebook on Gathering the Data on Cases of Discrimination in Bosnia and Herzegovina*.[45] At the institutional level, numerous States (Afghanistan, Guatemala, Kenya, Malaysia, Nepal, Nigeria, Panama, Thailand, Uruguay and Zimbabwe) noted the work of their ministries of women's affairs or gender equality commissions. Chile mentioned the establishment of the Ministry of Women and Gender Equality as one of the main advances with regard to the promotion of women's rights. Ethiopia reported on the establishment of an office with ministerial rank for guiding and implementing women's affairs. A large number of countries reported on other measures, including national gender equality strategies or gender action plans. For example, Belarus adopted its fifth national plan on promoting gender equality for 2017–2020 and planned activities that were informed by national gender priorities, the Convention on the Elimination of All Forms of Discrimination against Women and Sustainable Development Goal 5.

52. Many countries emphasized the importance of gender mainstreaming and measures taken to integrate a gender perspective into each policy area and each phase of the policymaking process, including gender-responsive budgeting. Indonesia reported on the enactment of special regulations on gender mainstreaming and gender-responsive planning and budgeting, while Maldives had appointed gender focal points in line ministries and agencies to promote gender mainstreaming. Guatemala drew attention to its special spending mechanism, which aimed to contribute to the visibility of budgetary resources to promote gender equity and, in particular, to identify allocations that benefited women and girls.

53. More than half of the countries reporting under the voluntary national review reported on measures taken to address the low participation of women in decision-making. Countries reported on adopting quota systems or quota laws (Chile, Indonesia, Jordan, Panama, Slovenia, Uruguay and Zimbabwe) and capacity-building programmes for women running for elective office (Belize and Kenya), in order to increase participation of women in decision-making or leadership positions. The Republic of Korea initiated the Framework Act on Gender Equality (2015), which, among other measures, introduced quotas for administrative positions in public organizations and promoted the participation of women in decision-making processes and in public, political and economic activities. The Republic of Korea focused on cross-cutting programmes linking gender equality with education and good health, such as "The better life for girls" initiative that focused on girls' education and health in developing countries and built on the fact that education and health were inherently connected in order to promote girls' empowerment.

54. France reported that its High Council for Gender Equality reported directly to the Prime Minister and had, since 2013, been holding discussions with stakeholders to draw up and improve public policy guidelines on rolling back stereotypes, gender equality, reproductive rights and gender-based violence.

[45] Submission of 5 March 2018.

55. The Government of Guatemala reported[46] that it had carried out a process of socialization, consultation, validation and technical analysis in order to adapt the 2030 Agenda to the national context and the National Development Plan. That process resulted in a strategy to integrate the Sustainable Development Goals with the Plan and the National Development Policy "K'atun Nuestra Guatemala 2032". The participation of the population in the areas of development and public management was ensured through the system of development councils, which allowed the needs of citizens at the community and national levels to be raised with the government authorities. Those needs were incorporated into national planning and converted into action through municipal plans.

56. The above mechanisms are examples of promoting the participation of different groups, including those in situations of vulnerability, in the implementation of the Sustainable Development Goals and, more generally, in decision-making processes. However, the information provided by States is limited by the format of the voluntary national reviews and the time constraints of the process.

57. According to the global indicator framework,[47] the following indicators are to be used to measure inequality within countries: growth rates of household expenditure or income per capita among the bottom 40 per cent of the population and the total population (10.1.1); proportion of people living below 50 per cent of median income, by sex, age and persons with disabilities (10.2.1); proportion of population reporting having personally felt discriminated against or harassed in the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law (10.3.1); and labour share of GDP, comprising wages and social protection transfers (10.4.1). The indicators, however, are largely insufficient to track progress in eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.

58. The global indicator framework contains a larger number of indicators to measure the progress towards achieving gender equality and empowering all women and girls. Countries must evaluate: whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex (5.1.1); proportion of ever-partnered women and girls aged 15 years and older subjected to physical, sexual or psychological violence by a current or former intimate partner in the previous 12 months, by form of violence and by age (5.2.1); proportion of women and girls aged 15 years and older subjected to sexual violence by persons other than an intimate partner in the previous 12 months, by age and place of occurrence (5.2.2); proportion of women aged 20–24 years who were married or in a union before age 15 and before age 18 (5.3.1); proportion of girls and women aged 15–49 years who have undergone female genital mutilation/cutting, by age (5.3.2); proportion of time spent on unpaid domestic and care work, by sex, age and location (5.4.1); proportion of seats held by women in (a) national parliaments and (b) local governments (5.5.1); proportion of women in managerial positions (5.5.2); proportion of women aged 15–49 years who make their own informed decisions regarding sexual relations, contraceptive use and reproductive health care (5.6.1); Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex (5.a.1 (a)); proportion of individuals who own a mobile telephone, by sex (5.b.1).

59. While the above indicators look at a number of areas, notably they do not cover issues such as availability of mechanisms for access to information or conditions for participation of women or other groups in a situation of vulnerability in decision-making related to issues that concern them. Furthermore, they do not measure, for example, the number and success rates of anti-discrimination complaints. Such additional qualitative assessment would go a long way towards promoting both equality and participation. To move beyond the slogan of leaving no one behind, additional efforts should be invested in tracking multiple and intersecting forms of discrimination[48] and the scaling up measures undertaken to address these.

[46] Submission of 23 April 2018.
[47] See footnote 38 above.
[48] See para. 17 above.

VI. Conclusions and recommendations

60. The widening disparities of today's world require the adoption of sound national and international policies to empower the bottom percentile of income earners and promote inclusion of all regardless of sex, race, ethnicity or any other prohibited grounds of discrimination.

61. What are the steps necessary to effectively reduce inequalities within countries? While this is a complex question that requires context-specific answers, it is nevertheless possible to identify some key areas of action.

A. Identifying those left behind

62. One issue that needs to be addressed urgently is the limited availability of adequate data that is disaggregated by, inter alia, gender, age, disability, income, race and ethnicity. Such disaggregated data is needed to accurately assess a situation, to make inequalities visible, and to identify those who have been left behind. Only based on such data can we develop evidence-based policies that specifically target those most in need. Disaggregated data is also important for the implementation, monitoring and evaluation of development policies and programmes, as well as for the overall tracking of progress in the implementation of the right to development on an equal basis for all segments of society.

63. The Special Rapporteur would like to underline that the collection of data to assess levels of inequality and discrimination has to be done in accordance with a human rights-based approach. This means that data collection should be based on the principles of participation, informed consent (for example, the consulted communities and individuals should have full information about the purposes of the data collection) and self-identification (for example, individuals should be able to identify themselves as members of a minority or indigenous people, rather than the State's authorities determining such membership). Consultations with relevant stakeholders brought forward the suggestion that civil society organizations with relevant expertise could engage in data collection exercises at community level. This could not only contribute to reducing the cost of data collection but also empower communities to participate in informing development policies at the local level. States need to seek innovative approaches to bridge capacity gaps in data collection, including by encouraging communities themselves, with the engagement of civil society organizations and academic bodies, to perform data collection as a complement rather than a substitute to that done by the State, which retains the primary responsibility for such function. In this regard, civil society should work closely with national statistical institutes for capacity-building purposes. States could also adopt mixed approaches to data collection, in order to capitalize on existing resources. This could include the use of mass media and communication tools as resources and building networks of opinion leaders (e.g. traditional/religious leaders and women leaders), while ensuring the inclusion and active participation of disadvantaged groups, such as indigenous peoples, forest communities and nomadic communities, in compliance with human rights principles governing data protection and safeguards.

64. Another crucial question in leaving no one behind is to identify, acknowledge and address the root causes of inequality and discrimination. Only when we know why some groups or countries are left behind, can we develop appropriate polices and strategies. Understanding how various forms of discrimination intersect is key in this regard. States should support independent critical research, conduct comparative studies, resorting to both qualitative and quantitative methods. The collection of disaggregated data is crucial to realizing the right to development and national statistics agencies need to be properly equipped to collect it by developing capacity to use qualitative and quantitative human rights indicators when analysing inequalities. Furthermore, States should systematically and coherently assess their progress towards implementing Sustainable Development Goals 10 and 5 and other targets related to progressing towards equality in their voluntary national reviews.

B. Participatory processes

65. Furthermore, ensuring inclusive and participatory processes is of utmost importance from the perspective of the right to development. Once those who have been left behind are identified, efforts need to be geared toward systematically reaching and empowering them. Evaluating how this can best be accomplished is a critical first step in the effective implementation of the 2030 Agenda. The success of targeted policies and programmes will depend largely on the level of participation and consultation of the beneficiaries.

66. Since the right to development entitles all persons and peoples to participate in, contribute to and enjoy economic, social, cultural and political development, a key task is to ensure inclusiveness and meaningful participation of relevant stakeholders at all levels of decision-making. Enabling disadvantaged and marginalized individuals and groups to actively participate in decision-making processes is essential to overcome structural inequalities and discrimination; to ensure their place as key actors in the development of countries; and to ensure the equal sharing of benefits. States, as the ultimate bearers of responsibility for reducing inequalities, must ensure that participatory approaches, reaching all concerned segments of the society, are developed and adequately financed. The cost of civil society participation should be duly budgeted into development planning processes at both policy and programmatic levels. States should also work to increase the capacity of civil society to develop technical expertise and provide space for coordinated actions with Governments. States must also establish mechanisms for easy and effective access to up-to-date information related to development policies and processes, define reliable information schemes while designing development plans, and allocate adequate resources to that end.

67. Ensuring that no one is left behind requires a dedicated focus on the equal rights of women and on ensuring women's participation in decision-making. States must take action to provide genuine opportunities and strengthen capacity of women to actively and meaningfully participate in national planning, policy design, implementation and budgeting, which affect their livelihoods and wellbeing. Participation of women without discrimination of any kind in economic and political decision-making and policy formulation so as to advance gender equality and women's empowerment is indispensable for the effectiveness of all development processes.

C. Accountability mechanisms

68. While the right to development is only justiciable in the context of the African Charter on Human and Peoples' Rights, for participation to be genuine and effective, it should be accompanied by adequate accountability mechanisms. Effective legal mechanisms to defend equality can go a long way towards protecting and promoting the right to development as well. During the regional consultations, held by the Special Rapporteur, it was highlighted that effective access to information is an important prerequisite in this respect. To this end, detailed information/consultation schemes should be integrated in all development policies and activities at the international and domestic levels. Such schemes should ensure that affected individuals and communities understand how they can claim their rights when the latter have been violated in the context of development processes. National accountability mechanisms, such as anti-discrimination complaints mechanisms, should have the capacity to process and provide effective remedies for violations. Existing mechanisms must be made more visible and accessible, including to persons speaking minority languages and persons with disabilities. National human rights institutions can also play a role in ensuring equal participation in economic, social, cultural and political development by, for example, taking up social and economic rights issues and discrimination complaints.

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Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Note by the Secretariat

Summary

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, submitted pursuant to Human Rights Council resolution 33/1.

In the present report, the Special Rapporteur discusses the impact of slavery and servitude on marginalized migrant women workers in the global domestic economy.

The Special Rapporteur outlines the State obligations related to the protection of migrant workers; she indicates how women migrant domestic workers are affected by servitude, as bolstered by State economic policy, and she refers to human rights violations affecting migrant domestic workers before discussing options and persisting limitations in accessing justice. In her report, the Special Rapporteur also refers to the role of private employment agencies and to positive measures taken by Member States to protect against domestic servitude.

To prevent human rights violations including servitude in the domestic sector, policies are needed that tackle discrimination while also helping to balance the legitimate concerns of both employers and workers. A sustainable domestic work economy should ensure access to justice, effective enforcement and remedies in the case of exploitation and abuse, while also addressing issues of prejudice against migrants through advocacy.

In her recommendations, the Special Rapporteur advises States on how to effectively prevent and combat domestic servitude by ensuring the protection of migrant women and their access to decent work.

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I. Introduction and activities of the Special Rapporteur

A. Participation in consultations and conferences

1. During the reporting period, the Special Rapporteur took part in a wide range of international conferences and initiatives relating to the prevention and eradication of contemporary forms of slavery.

2. In October 2017, the Special Rapporteur contributed to the development of a video by the Council on Foreign Relations on contemporary forms of slavery, which is part of an information guide about modern slavery, published in January 2018.[1]

3. In December 2017, the Special Rapporteur delivered a video statement at the legislative drafting seminar on modern slavery and human trafficking organized by the United Kingdom of Great Britain and Northern Ireland branch of the Commonwealth Parliamentary Association. In the same month, she delivered a keynote speech through a video message during a workshop organized by the Government of Mauritania in partnership with the Office of the United Nations High Commissioner for Human Rights in Mauritania. The purpose of the workshop was to assess progress in implementing the road map for eradicating contemporary forms of slavery subsequent to the Special Rapporteur's visit from 25 to 28 April 2017.

4. In April 2018, the Special Rapporteur convened a round table on the gender dimension of contemporary forms of slavery, which was attended by representatives of civil society and United Nations agencies. In the same month, the Special Rapporteur took part in a panel discussion on target 8.7 of the Sustainable Development Goals convened by the Commonwealth Human Rights Initiative prior to the Commonwealth Heads of Government Meeting.

5. In June 2018, the Special Rapporteur attended a panel discussion on global perspectives on modern day slavery in New York, convened by the Union Internationale des Avocats. She also took part in a high-level meeting on innovative initiatives for achieving target 8.7 of the Sustainable Development Goals and in a conference on measuring progress towards achieving target 8.7 organized by Alliance 8.7. The Special Rapporteur also attended the launch of the 2018 Global Slavery Index.

6. In October 2018, the Special Rapporteur will present a thematic report on the gender dimension of contemporary forms of slavery to the General Assembly during its seventy-third session.

7. A public call for submissions to the present report was placed on the website of the mandate and a questionnaire circulated to all the Permanent Missions in Geneva, to specialized agencies, intergovernmental organizations and civil society. A number of submissions were received from States, intergovernmental organizations and civil society and these were taken into account in drafting the report. The Special Rapporteur expresses her gratitude to all who provided information and made submissions.

8. The present report focuses specifically on migrant domestic workers and complements the report on the manifestations and causes of domestic servitude issued by the previous Special Rapporteur on contemporary forms of slavery (A/HRC/15/20).

B. Country and follow-up visits

9. The Special Rapporteur conducted an official visit to Paraguay from 17 to 24 July 2017 (A/HRC/39/52/Add.1). From 4 to 8 August 2017, the Special Rapporteur conducted an official visit to the Niger to follow up on the implementation of the recommendations

[1] See www.cfr.org/interactives/modern-slavery/#!/section6/item-38.

presented in her 2015 report after undertaking a country visit in 2014 (A/HRC/30/35/Add.1).

10. The Governments of Italy and Togo have accepted the Special Rapporteur's request to conduct an official visit in the second half of 2018. She thanks both Governments for their support and calls on other Member States to respond favourably to her requests for visits.

II. Legal concepts: slavery, servitude and forced labour

11. Today about half the total population of international migrants are women. They usually move across international borders in search of a better life for themselves and their families. Many of these women suffered from poverty, marginalization and gender-based violence and discrimination in their countries of origin. In destination countries, they often find that working in female-dominated occupations, such as in the domestic sector, is their only option. As migrant domestic workers, some women face grave human rights violations including servitude and slavery-like practices. The present report assesses the impact of slavery and servitude on marginalized women workers in the global domestic economy.

12. Despite its prohibition as a universally applicable international customary law norm enforceable by States against one another[2] and from which no derogation is permissible even in situations of emergency,[3] slavery continues to exist as one of the most egregious human rights violations in the global economy. The definition of slavery elaborated in the Slavery Convention of 1926, as supplemented by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised", remains applicable today. However, the legal right to ownership has been replaced by many different forms of coercion and control and, as discussed in the present report, are exacerbated in the case of migrant workers in domestic servitude, who are in a foreign country and have irregular migrant status.

13. The exercise of "any or all of the powers attaching to the right of ownership" thus distinguishes servitude from "slavery".[4] In practice, however, the distinction is often not very clear and depends largely on the degree of control and power exercised over the individual. In its decisions, the European Court of Human Rights has set out a number of indicators for domestic servitude involving migrant domestic workers linked to the vulnerability of the person, limitations on personal freedom, violation of human dignity, excessive hours of work, no payment or remuneration or disproportionate payments and the perceived permanency of the situation.[5]

14. Servitude often occurs in situations of economic exploitation "in which the victim is so dependent on the perpetrator that she or he cannot leave the situation of exploitation" (see A/HRC/15/20, para. 47). Dependency can be created by economic factors, lack of freedom of movement and physical and psychological abuse (ibid., paras. 48–51). Servitude often results from debt bondage, especially where excessive recruitment fees are charged by agents and the recruitment of migrant workers is unregulated in national legislation. Debt bondage is defined as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value

[2] *Barcelona Traction, Light and Power Company, Ltd (Belgium v. Spain), Judgment of 5 February 1970, I.C.J. reports 1970*, p. 3.

[3] International Covenant on Civil and Political Rights, art. 4 (2).

[4] The Supplementary Convention on the Abolition of Slavery recognizes that institutions and practices such as those listed in article 1 may also constitute slavery.

[5] See, for example, *Siliadin v. France*, judgment of 26 October 2005 (application No. 73316/01). See also Helen Duffy, "Litigating modern day slavery in regional courts", *Journal of International Criminal Justice*, vol. 14, No. 2 (May 2016).

of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined".[6]

15. Slavery, in its traditional form as chattel slavery exists at one end of a continuum of human exploitation. Domestic and other forms of servitude, forced labour and other slavery-like practices exist along this continuum. Forced labour is "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily".[7] At the other end of the continuum is decent work, which respects all fundamental principles and rights at work.[8] Access to decent work is the antidote to slavery and all forms of labour exploitation and human rights violations at work. It forms a key objective of target 8.7 of the Sustainable Development Goals, which encompasses a universal commitment to eradicate forced labour and end modern slavery and human trafficking.

16. Slavery, servitude and forced labour often occur as a result of human trafficking, which under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime is explicitly linked to those forms of exploitation. The present report, however, focuses only on voluntary migration for domestic work.

III. State obligations under international human rights law and labour law to protect migrant workers in domestic servitude

17. Article 6 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone, among other rights, to the right to work, which includes the right to the opportunity to gain a living by work freely chosen or accepted; to the enjoyment of just and favourable conditions of work: to form trade unions and join a trade union of one's choice; and the right to social security, including social insurance. This right applies to everyone including to migrant workers.[9] The International Covenant on Civil and Political Rights provides for a catalogue of rights, including equality before the law without any discrimination and freedom of association (arts. 26 and 22 respectively), which also apply to migrant workers without discrimination.

18. Additionally, States bear specific obligations to protect the human rights of migrant workers under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In article 2 of the Convention a migrant worker is defined as a person "engaged in a remunerated activity in a State of which he or she is not a national". In article 5 migrant workers are defined as "in an irregular situation" if they are not authorized to enter, to stay and to engage in a remunerated activity in the destination country. Under article 11, migrant workers are protected from being held in slavery or servitude or from being required to perform forced or compulsory labour.

19. The fundamental ILO conventions[10] and the ILO Migration for Employment Convention 1949 (No. 97) and the Migrant Workers (Supplementary Provisions)

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[6] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, art. 1 (a).

[7] See International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), art. 2.

[8] "Promoting jobs and enterprise, guaranteeing rights at work, extending social protection and promoting social dialogue are the four pillars of the ILO Decent Work Agenda with gender as a cross-cutting theme", foreword to ILO, "Decent work and the 2030 Agenda for Sustainable Development". See also ILO Declaration on Fundamental Principles and Rights at Work (1998), which commits ILO member States to respect and promote the elimination of child labour and forced labour, freedom from discrimination at work and freedom of association and collective bargaining, whether or not they have ratified the relevant ILO conventions.

[9] See Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005) on the right to work, para. 30.

[10] The fundamental ILO Conventions are: the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); the Right to Organize and Collective Bargaining Convention, 1949 (No. 98); the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour

Convention, 1975 (No. 143) also address the protection of labour rights of migrant workers. The ILO Domestic Workers Convention, 2011 (No. 189) and its accompanying Recommendation No. 201 contain norms and standards for the effective promotion and protection of the rights of domestic workers, including migrant domestic workers.

20. The Domestic Workers Convention defines domestic work as "work performed in or for a household or households". Domestic work is thus defined by the place in which the work is performed and not by the employer or by tasks. Cleaning, cooking, washing, grocery shopping, taking care of children, the elderly and/or the sick, gardening, driving and guarding the house can all be covered by the definition in the Convention.[11] Article 5 of the Convention requires that "each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence". States are required to ensure that before departure, migrant domestic workers have written contracts that they can understand and that are enforceable in the country of employment (art. 8 (1)). States parties are encouraged to collaborate to ensure the effective application of the Convention to migrant domestic workers (art. 8 (3)) and called upon to regulate the recruitment of domestic workers by private employment agencies and to conclude bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in the recruitment, placement and employment of migrant domestic workers (art. 15). Article 15.1 (e) states that fees charged by private employment agencies should not be deducted from the remuneration of domestic workers.

21. A number of regional mechanisms and instruments similarly protect the rights of migrant domestic workers, including those in an irregular situation.

22. In addition, all States Members of the United Nations have committed to achieving the Sustainable Development Goals, which contain interlinked targets addressing the root causes of contemporary forms of slavery. Target 8.7 commits States to "Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms" and target 8.8 requires them to "Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment".

23. The positive contribution of migrants for inclusive growth and sustainable development are recognized in the Sustainable Development Goals and States have committed to cooperating internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants, regardless of migration status, of refugees and of displaced persons. States need to ensure that those protections apply to all migrant workers irrespective of their migration status.

IV. Women migrant domestic workers, economic policies and causes of servitude

24. Paid domestic work is a highly feminized sector, with recent estimates indicating that there are 70 million domestic workers employed by households worldwide, of which 49.2 million are women (70 per cent) and 11.5 million are migrant women. Women domestic workers outnumber men in almost all regions. They constitute almost all domestic workers in the Americas (92.1 per cent), in Europe and Central Asia (88.7 per cent) and in Africa (80.3 per cent).[12]

25. The steady increase in the overall number of workers, mainly migrant women, seeking employment in the domestic sector is attributed to three main factors: the

Convention, 1957 (No. 105); the Minimum Age Convention, 1973 (No. 138); the Worst Forms of Child Labour Convention, 1999 (No. 182); the Equal Remuneration Convention, 1951 (No. 100); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

[11] See ILO, "Formalizing domestic work" (2016).

[12] See ILO, *Care Work and Care Jobs for the Future of Decent Work* (Geneva, 2018).

integration of women into the global labour market, which leaves a gap with regard to domestic and care work; demographic shifts, which are reflected in an ageing population and a reduction in the role of the traditional extended family; and increasing reliance on domestic workers related to the insufficiency of public care service provision.[13]

26. That increase in numbers has occurred within the framework of a neoliberal economic model, as global markets have exacerbated social hierarchies and shaped structural and long-lasting patterns of exploitation.[14] That macroeconomic framework is a key driver for the slavery and servitude of women, especially in relation to forced labour, debt bondage, harmful working conditions and other violations of labour rights.[15] The privatization of public services, structural adjustment programmes and cuts to social welfare schemes have led to the migration of people from rural areas to cities within their countries or overseas.[16]

27. Indebted States, aiming to appease the global financial institutions pushing for austerity measures and structural adjustment programmes, have actively promoted the emigration of women in order to increase their remittances, without proper guarantees regarding compliance with human rights and labour standards.[17] Some countries have encouraged the migration of domestic workers as part of a deliberate strategy to alleviate poverty, reduce unemployment and generate access to hard currency.[18]

28. Domestic work is undervalued, informal and invisible, which leads to poor working conditions and to vulnerabilities which are higher than in other forms of informal employment.[19] It is considered "unskilled" work, despite that fact that many migrant domestic workers are educated and highly skilled.

29. Many marginalized women see domestic work as a way of escaping violence, including domestic violence and forced marriage. Other common push factors for migration include feminized poverty, conflict, and economic and social transformation; also discrimination based on gender, caste, class, age, occupation, language, race, religion or other factors; limited access to landownership; inequality within and between countries; climate change, and an overall lack of choice for women to determine their own lives. That should not discount the agency of women who choose to migrate or those who find "liberation" in the chance to become independent breadwinners and to improve their children's lives.

30. There are examples of countries which place restrictions on women's migration for domestic work as a way to prevent trafficking and exploitation. In practice, this has unintentionally pushed women to use irregular migration channels which heighten their risk of sexual and gender-based violence, exploitation and abuse (see A/HRC/38/41/Add.1, paras. 77–78).[20]

31. An estimated 11.5 million domestic workers are international migrants, representing 17.2 per cent of all domestic workers and 7.7 per cent of all migrant workers worldwide.[21] These figures indicate that household tasks are carried out by migrant workers in many parts of the world and many of them leave their domestic and care responsibilities to

[13] See ILO, "Formalizing domestic work".

[14] See Geneviève Le Baron and others, *Confronting Root Causes: Forced Labour in Global Supply Chains* (openDemocracy and Sheffield Political Economy Research Institute, January 2018).

[15] See Asia Pacific Forum on Women, Law and Development, "Briefing paper on the gender dimension of contemporary forms of slavery, its causes and consequences" (April 2018).

[16] See Global Alliance Against Traffic in Women, "Enabling access to justice. A CSO perspective on the challenges of realising the rights of South Asian migrants in the Middle East" (Bangkok, 2017).

[17] Center for Women's Global Leadership, submission for the present report. All submissions available from www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/DomesticServitudeSubmissions.aspx.

[18] Ibid.

[19] United Nations Entity for Gender Equality and the Empowerment of Women, submission for the present report.

[20] See also Anti-Slavery International, submission for the present report.

[21] *ILO Global Estimates on Migrant Workers, Results and Methodology. Special Focus on Migrant Domestic Workers* (Geneva, 2015).

others.[22] Most migrant domestic workers are from the global South, working in high-income countries. The Arab States, North America and Northern, Southern and Western Europe account for about 52 per cent of all domestic workers worldwide, with the majority being migrants.[23] In the Arab States, 82.7 per cent of all domestic workers are migrants and there is a particularly strong link between female migration and domestic work in the region.[24] In Hong Kong, there are approximately 370,000 migrant domestic workers (98.8 per cent are women)[25] and in Latin America and the Caribbean, 17.2 per cent of all domestic workers are migrants.[26]

32. A range of social and economic conditions place women migrants in situations of vulnerability, especially if they are members of indigenous groups, members of caste affected groups or if they face multigenerational poverty.[27] Discrimination on various grounds increases the chance of already vulnerable individuals becoming trapped in domestic servitude, reducing their opportunity to escape from the situation either in the short- or long-term. Marginalized women often suffer long-standing patterns of discrimination that perpetuate not only domestic work but also the migration cycle. Women migrant domestic workers are discriminated against on the basis of sex, gender, race, ethnicity, national origin and social status, which leads to intersecting disadvantages. Furthermore, discriminatory migration policies limit women's access to safe and orderly migration pathways, which in turn limits their job opportunities in transit and host countries. On that basis, many migrant women end up in informal employment, particularly in domestic and care work.[28] They often do not have employment contracts, which makes it difficult to protect and claim their rights.[29] In Mexico, for example, 9 out of 10 domestic workers do not have a contract.[30]

33. Informal jobs perpetuate traditional gender norms regarding "women's work" and they offer limited or no social protection or labour rights. That is related to the fact that domestic work is not considered as employment under labour law and thus households are not recognized as workplaces and private persons who hire them are not recognized as employers (see A/HRC/15/20, para. 75). ILO estimates that 75 per cent of all domestic workers are in informal jobs and only 10 per cent of all domestic workers are covered by general labour legislation to the same extent as other workers and 29.9 per cent are completely excluded from the scope of national labour legislation.[31] The exclusion of domestic work from labour protections is one of the manifestations of discriminatory attitudes towards women's work and it also makes domestic workers more vulnerable to servitude.[32]

34. In European Union member countries, for example, application of labour rights to domestic workers is very limited in both law and practice, in particular for undocumented domestic workers.[33] Consequently, the usual labour standards often do not apply to migrant domestic workers, for example with regard to maximum or standard working hours, as applicable to other sectors.[34] In that context, victims are at risk of being criminalized for immigration or criminal offences that are committed as a direct result of exploitation: they may be penalized for being undocumented if their employer or recruitment agent retains their passport, or they may even be subjected to corporal punishment for immigration

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[22] ILO, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* (Geneva, 2013).

[23] *ILO Global Estimates on Migrant Workers*.

[24] Ibid.

[25] Government of Hong Kong, China, action plan to tackle trafficking in persons and enhance protection of foreign domestic helpers (March 2018).

[26] *ILO Global Estimates on Migrant Workers*.

[27] PICUM, GAATW and La Strada International, submission for the present report.

[28] Ibid.

[29] Anti-Discrimination Centre Memorial, submission for the present report.

[30] See submission of Mexico.

[31] ILO, *Domestic workers across the world*.

[32] Ibid.

[33] Submission of PICUM, GAATW and La Strada International.

[34] Justice Centre Hong Kong, submission for the present report.

offences.[35] The criminalization of victims of trafficking or servitude is exacerbated by among law enforcement personnel based on power, gender, race and social status.[36]

35. Labour inspectors are not often allowed to inspect private homes without judicial authorization, which means that there is no oversight over the working and living conditions of domestic workers. That has serious consequences, for all domestic workers, but particularly for migrant domestic workers in an irregular situation, for example regarding their access to health care, social protection and labour rights, such as rest time, regulated working hours or maternity leave.[37] Furthermore, migrant workers in an irregular situation often lack knowledge about the applicable laws, their rights and their employer's obligations, much less about support and protection services and even the risks they might face during the migration process and upon arrival in the country of destination.[38] Even if legislation is favourable, workers are often not informed about their rights, the duration of their contract, salary, weekly time off or daily hours in order to prevent abuse.

36. In some countries of the Gulf Cooperation Council, such as Bahrain, Saudi Arabia and the United Arab Emirates, which host about 2 million migrant domestic workers, and in other Arab States, such as Lebanon, migrant workers are particularly vulnerable to exploitation due to the *kafala* system of labour sponsorship (A/HRC/36/43). Under this system, the immigration status of a migrant worker is legally bound to an individual employer or sponsor for the period of the contract. Control over the worker is often increased by their employer confiscating their passport and travel documents, despite legislation in some destination countries that declares this practice illegal.[39] Being required to live in the employer's home increases the dependency on the employer, blurs work and rest time and raises privacy concerns. Owing to the live-in rule, enforcement of regulations and monitoring of the working conditions of migrant domestic workers are difficult and limited, as any abuse takes place behind closed doors.

37. Domestic workers in diplomatic households face similar practices, as their residence permits are commonly linked to their employers, leading to a major protection gap based on the dependency and vulnerability of the domestic worker.[40] Accessing justice is very difficult for domestic workers in diplomatic households owing to the immunity of the employer.[41] In recent years, however, efforts led by the Organization for Security and Cooperation in Europe (OSCE) to prevent domestic servitude in diplomatic households have resulted in normative changes in at least 16 OSCE States. In the United States of America, the federal authorities have prosecuted 11 criminal cases against diplomats and international officials for trafficking, abuse and exploitation of domestic workers since 2000.[42]

38. Migrant domestic workers in an irregular situation are "invisible" to national authorities and often face language barriers, a lack of knowledge about their rights and often lack a safety net or a social network in the host country. Owing to fear of deportation, domestic workers tend to live in anonymity, which can lead to isolation and hence to an enabling environment for forced labour and servitude.[43]

39. Evidence gathered has shown that if migrant domestic workers have contracts that are not tied to their employers and if they are free to change jobs in cases of abuse, that provides them with a safe way out of situations of servitude and abuse. Such measures are only effective, however, if migrant domestic workers are not required to leave the country

[35] Ibid.
[36] ILO, "Lessons learned by the work in freedom programme" (New Delhi, 2017).
[37] See Committee on Migrant Workers, general comment No. 1 (2011) on migrant domestic workers, para. 43.
[38] ILO Ethiopia, submission for the present report.
[39] Migrant Forum Asia, policy brief No. 2, "Reform of the kafala (sponsorship) system", available at www.ilo.org/dyn/migpractice/docs/132/PB2.pdf.
[40] Ban Ying and LEFÖ-IBF.
[41] Ibid.
[42] Human Trafficking Legal Center, submission for the present report.
[43] Ibid.

upon termination of their original employment and if a visa extension of sufficient length is provided, allowing them to find an alternative employer.[44]

V. Human rights violations and access to justice

40. Gender-based violence faced by domestic workers is often ignored or considered a personal problem, rather than a rights violation for which the employer is responsible.[45] Those risks and vulnerabilities are further aggravated for migrant domestic workers who are undocumented or in an irregular situation, not least because they often risk deportation if they contact the State authorities to seek protection from an abusive employer.[46]

41. Not all migrant domestic workers face working and living conditions which amount to servitude. Owing to the informality of domestic work, there is insufficient data on migrant women in domestic servitude. However, domestic workers face some of the poorest working conditions across the care economy and are particularly vulnerable to exploitation.[47] Their working conditions are the result of a set of labour market, migration and care policies, or the lack thereof. Depending on available and affordable alternatives, households may find it tempting to resort to the cheapest and easiest solutions for care on the market, which are commonly domestic workers.[48]

42. Frequently driven by poverty, domestic workers, including migrants, often find themselves forced to accept working and living conditions that violate their fundamental human rights. On that basis, many migrant domestic workers are exposed to multiple types of abuse, such as physical and social isolation; restriction of movement; psychological, physical and sexual violence; intimidation and threats; retention of identity documents by the employer; withholding of wages; abusive working and living conditions and excessive overtime. If one or more of these situations applies, ILO considers it to constitute forced labour.[49] If those indicators of forced labour are combined with a lack of choice and strong control over their personal freedom, which many employers exercise, domestic workers may find themselves trapped in servitude, or even slavery.

43. A 2017 report on modern slavery indicates that the domestic work sector accounted for 24 per cent of forced labour exploitation and there were multiple means of coercion, including violence, experienced by domestic workers.[50] A forthcoming study conducted by ILO found that 72 per cent of returnees and Ethiopian migrant domestic workers in Arab States were characterized as victims of forced labour.[51]

44. Whether a migrant domestic worker is likely to be in forced labour depends largely on their debt burden, which many incur through recruitment fees. Workers with excessive debt were found to be six times more likely to be in forced labour than those without high debt, as they felt they had no choice but to keep working even in abusive conditions.[52] Workers often have to repay their debts for several months and sometimes years while recruitment fees are often directly deducted from their wages. This system creates a strong dependency on the employer and thus increases the risk of abuse and exploitation.

45. Highly abusive working and living conditions are prevalent in all geographic regions and by working in private homes migrant workers put their right to privacy and to security

[44] Kalayaan and Anti-Slavery International, submission for the present report.
[45] Ibid.
[46] See Committee on Migrant Workers, general comment No. 1 (2011) on migrant domestic workers, para. 7.
[47] ILO, *Care Work and Care Jobs for the Future of Decent Work* (Geneva, 2018).
[48] Ibid.
[49] "ILO indicators of forced labour. Special action programme to combat forced labour" (Geneva, 2012).
[50] ILO, International Organization for Migration and Walk Free, "Global estimates of modern slavery: forced labour and forced marriage" (2017).
[51] ILO, "Improved labour migration governance to protect migrant workers and combat irregular migration in Ethiopia" (2018).
[52] Justice Centre Hong Kong, "Coming clean - an overview" (2016).

at risk.[53] Migrant domestic workers often suffer high rates of physical and psychological abuse, including the absence of any private space, such as a bedroom, over 15 hours of work a day, no clear rest periods and an expectation that they will be on standby at all times. The confiscation of identity documents, the prohibition or unreasonable restriction of mobile phones and a prohibition on leaving the house, including during rest periods, are also frequent practices.[54] In one case, a domestic worker was not able to speak with her family in almost seven years.[55] Such exploitative conditions have a dire impact on the health of domestic workers, as they have insufficient time to care for themselves and their families.

46. Many migrant domestic workers are subject to sexual harassment and to gender-based violence that is often ignored or considered a personal matter, rather than a rights violation for which the employer is responsible.[56] Certain instances of abuse by employers can potentially amount to torture and several deaths of domestic workers have been made public in the recent past. Discriminatory or even racist treatment of migrant domestic workers is frequent.

47. Some domestic workers live in constant fear of being raped.[57] In some countries, domestic workers who complain of sexual assault might face allegations of adultery and fornication, which are punishable by law. In other countries, domestic workers who become pregnant face termination of work and they become irregular migrants and hence face severe constraints in accessing health care.[58]

48. Other types of abuse suffered by migrant domestic workers include being deprived of food and water; low or no pay; constant surveillance; exposure to hazardous chemicals without adequate protection; and lack of access to health care, which is often due to a prohibition to leave the house, the high cost of health care or because migrant domestic workers lack documentation to prove their legal right to work in the country and therefore cannot access services.[59] Migrant domestic workers commonly suffer from isolation from the outside world owing to a lack of language skills. In some cases, domestic workers are forced to sleep in the kitchen, on balconies, in the toilet or in a warehouse.[60]

49. In some countries, domestic workers are required to undergo mandatory medical tests which screen for pregnancy, syphilis, HIV and tuberculosis every six months. Those who fail the tests are repatriated.[61] Such practices are discriminatory, invasive and violate the right to privacy and dignity of migrant workers.

50. A further human rights violation commonly affecting domestic workers is the denial of their rights to freedom of association. As a result, domestic workers have a limited voice and representation in the sector which is one of the factors leading to poor working conditions.[62] The nature of the work — being located in a private home and often lacking freedom of movement — means it is difficult for migrant domestic workers to organize and join trade unions. In countries such as Lebanon, for example, a request for official recognition of a domestic workers union was denied by the Government.[63]

51. The vast majority of countries provide a maximum limit on working hours and guarantee weekly rest and annual leave. However, domestic workers are often exempted from this standard. Even where labour laws cover domestic workers in principle, there are often exemptions on maximum working hours, as it is considered that domestic work is not

[53] ILO, *Care Work and Care Jobs for the Future of Decent Work*.
[54] Submission of Kalayaan and Anti-Slavery International.
[55] Ibid.
[56] Center for Women's Global Leadership, submission for the present report.
[57] Submission of the Human Trafficking Legal Center.
[58] See Bina Fernandez, "Health inequities faced by Ethiopian migrant domestic workers in Lebanon", *Health and Place*, vol. 50 (March 2018).
[59] Submission of Anti-Slavery International.
[60] Ibid.
[61] Humanitarian Organization for Migration Economics, submission for the present report.
[62] ILO, *Care Work and Care Jobs for the Future of Decent Work*.
[63] Submission of Anti-Slavery International.

suitable for regulation because it is still regarded as a private arrangement in a household.[64] Similarly, 42.6 per cent of all domestic workers were found not to enjoy minimum wage protection and more than one third of all women domestic workers are not entitled to maternity leave or associated benefits. Coverage gaps are particularly significant in the Middle East and in South-East and South Asia.

52. Globally, the lack of social security benefits and of gender-sensitive health care coverage further increases the vulnerability of migrant domestic workers and their dependence on their employers.[65] In such a situation, it is very difficult for undocumented migrant domestic workers to safely exit a situation of violence and exploitation.

53. Over the past years, the treaty bodies have expressed serious concern regarding forced labour and the domestic servitude of women and children in all geographic regions.[66] For example, they have referred to practices amounting to domestic servitude or to insufficient legislation to prevent exploitation and abuse in the domestic sector.

54. Forced labour is an absolute violation of fundamental human rights and is considered a crime in most national legal systems. Nevertheless, victims of forced labour, servitude or other types of slavery-like practices face significant barriers in submitting and pursuing complaints, and thus face severe difficulty in securing access to justice for violations of their rights. That may be owing to a prohibition to leave the house, the confiscation of their passport or a fear of homelessness, detection of irregular migration status, arrest, detention or deportation.

55. Some migrant workers do not report abuse because they are not familiar with reporting channels, they do not trust governmental authorities or do not have access to the justice system under national laws, such as in Lebanon.[67] In other instances, they report crimes of forced labour or servitude, or of violence and abuse, but are not taken seriously by the authorities and the judiciary. Another obstacle is the absence of safe reporting channels. In many countries, a complaint cannot be filed without the involvement of the immigration authorities, which exposes victims to the authorities rather than enabling them to access services and protection mechanisms. If victims of servitude and of other human rights violations were able to file complaints, regardless of their migration status, and adequate firewalls between labour and immigration ministries were in place, their access to justice and protection from servitude, exploitation and abuse could be enhanced.

56. Ultimately, the significant asymmetry of power between domestic workers and their employers constitutes an obstacle to accessing justice and increases the difficulties workers may have in proving coercion and abuse. Evidence regarding the conditions of employment of a domestic worker remains within the confines of the workplace, the employer's home, while, depending on the jurisdiction, the burden of proof lies on the domestic worker and free legal aid is rarely available.[68] Furthermore, the absence of formal accountability mechanisms in the domestic sector makes it very difficult for victims to access justice and adequate remedies.[69] In countries such as France, many migrant domestic workers are exploited by individuals of the same nationality, which increases the fear of repercussions against family members in case of any reports of abuse.[70]

57. The existing structural barriers to accessing justice for victims of servitude contribute to a culture of impunity among perpetrators.[71] Very few victims of servitude seek compensation and as survivors of exploitation and abuse do not always identify as victims,

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[64] ILO, *Domestic workers across the world*.

[65] Ibid.

[66] See, for example, CAT/C/LBN/CO/1; CMW/C/BGD/CO/1; CMW/C/SEN/CO/2-3; CRC/C/CAF/CO/2; CRC/C/PAK/CO/5; CEDAW/C/BDI/CO/5-6; CEDAW/C/PHL/CO/7-8; CCPR/C/KAZ/CO/2; and CCPR/C/CHL/CO/6.

[67] Article 7 of the Lebanese labour law excludes domestic servants from the scope of application (see the submission of ILO Ethiopia).

[68] Submission of ILO Ethiopia.

[69] Ibid.

[70] Comité Contre l'Esclavage Moderne, submission for the present report.

[71] Submission of PICUM, GAATW and La Strada International.

and do not therefore seek access to justice. Others endure exploitative conditions because of the pressure to send remittances to their families.

VI. The role of private employment agencies

58. Private employment agencies constitute an important global industry composed of private sector actors, such as recruiters and their sub-agents, pre-departure training centres, transport companies and travel agencies, medical screening centres, insurance companies and visa consultancies, among many others. Those various, non-homogeneous businesses profit from the recruitment of migrant workers from one country and their placement in jobs in another.[72]

59. The lack of regulatory scrutiny over recruitment agencies exacerbates the vulnerability of migrant domestic workers to trafficking, bonded labour, forced labour and servitude.[73] Agencies and sub-agents that are not registered are not subject to the applicable laws, which makes it difficult to hold them accountable. In some cases, recruitment agents are close relatives or other persons known to the potential migrants, which often inspires trust and non-identification of the risk of being trafficked for labour exploitation.[74] In some cases, dependency on an employer or a recruiter might be seen as a positive aspect and as providing stability and protection.[75]

60. The complex and non-regulated system of private employment agencies provides an enabling environment for abuse and human rights violations. Exploitative practices among informal agents operating in different geographic regions are well known.[76] Such practices include the provision of false information regarding the type of employment; the conditions to be expected in the receiving country; the charging of illegal recruitment fees, which often lead the migrant to incur large debts; the confiscation of identity documents as a means to control the worker; and threats and intimidation and withholding of wages.[77] Frequently, the employer pays the wage to the recruitment agency, but the worker does not receive the wage. The employer has full control over the domestic worker for the duration of the contract with the recruitment agency and in order to retain and control the worker, coercion, verbal and physical violence are often used.[78] Migrant domestic workers who wish to return home are often dependent on the agents who recruited them, who may not be willing to facilitate their return home and so force them to remain and work in the host country.[79]

61. In some countries, legislation has been adopted that establishes a maximum amount which recruitment agencies are allowed to charge. In practice, however, many agencies charge more than the legal limit under the respective prevailing monthly salary. This practice makes workers more vulnerable to debt bondage and to exploitation.

62. Some countries have taken measures to prevent abusive practices by private employment agencies. In Lebanon, a code of conduct launched in 2013 provides guidance to recruiting agencies on promoting and protecting the rights of migrant domestic workers in the country.[80] Under the code of conduct, labour recruiters are prohibited from charging migrant workers recruitment fees but in practice, fees are charged instead in the home country or there are indirect fees through wage deductions by the employer.[81] In that sense, enforcement of the code of conduct has been limited and complementary measures, such as

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[72] ILO, "For a fee: the business of recruiting Bangladeshi women for domestic work in Jordan and Lebanon" (Geneva, 2015).

[73] Submission of Anti-Slavery International.

[74] Jharkhand Anti Trafficking Network, submission for the present report.

[75] Ibid.

[76] Ibid.

[77] Beate Andrees, Alix Nasri and Peter Swiniarski, *Regulating Labour Recruitment to Prevent Human Trafficking and to Foster Fair Migration: Models, Challenges and Opportunities* (ILO, Geneva 2015).

[78] Submission of Jharkhand Anti Trafficking Network.

[79] Ibid.

[80] See www.ohchr.org/EN/NewsEvents/Pages/LebanonCodeOfConduct.aspx.

[81] Submission of Anti-Slavery International.

the adoption and implementation of strong legislation on the regularization of recruitment agencies, would be needed.

63. The registration of recruitment agencies is another important step in preventing abuse through increased legal accountability.[82] Ethiopian legislation, for example, clearly defines and regulates the role of the private sector in overseas employment exchange services, in order to avoid precarious recruitment processes.[83] The withholding of travel documents by the agency and charging a fee on the worker are equally prohibited in Ethiopia.[84] With the objective of making recruitment processes more transparent and fairer, the Gulf Cooperation Council has agreed to establish standard regulations on transfer of employment, contracts and a minimum wage for domestic workers in 2018.[85]

64. In order to address concerns related to private employment agencies, informal labour intermediaries and other actors operating outside the legal and regulatory framework, ILO launched a global "Fair Recruitment Initiative" in 2015 which aims to prevent human trafficking; protect the rights of workers, including migrant workers, from abuse and fraudulent practices during the recruitment and placement process; reduce the cost of labour migration; and enhance development gains. The multi-stakeholder initiative is implemented in cooperation with Governments, employers' and workers' organizations, the private sector and other key partners.[86]

VII. Positive measures to protect against domestic servitude

65. At the regional and national level, numerous initiatives in law and in practice have led to improved conditions for migrant domestic workers. Steps have also been taken to reduce the risk of servitude specifically. For example, in cooperation with international organizations, OSCE and Belgian trade unions have promoted improved working conditions for workers in diplomatic households. That has led to significant changes: for example several European countries now interview workers upon arrival.[87] Some countries work with civil society organizations and use the annual work permit renewal as an opportunity to provide domestic workers with information and to identify cases of exploitation and human trafficking. In Germany, domestic workers present themselves personally once a year at the Federal Foreign Office for an interview upon renewal of the work permit, at which proof of the proper payment of wages by the employer needs to be provided through bank statements. In Austria, a yearly information seminar takes place, to which all domestic workers registered as working for diplomats receive a non-binding invitation. Similarly, the United States has taken measures to protect domestic workers in diplomatic households by introducing mandatory contracts in which the wage rate, regular rest times and a prohibition on making deductions for room and board, travel, medical care or meals are stipulated.[88]

66. In Colombia, domestic workers are protected by labour law and are required to have a contract that regulates their working conditions. Nevertheless, employers continue to have limited knowledge of the standards and legislation applicable to domestic workers and the oversight mechanisms required to monitor the effectiveness of mandatory contracts are lacking. In countries such as the United Kingdom and the Dominican Republic, training on identifying victims of contemporary forms of slavery is conducted for relevant government officials. The United Kingdom identifies and supports potential victims of contemporary forms of slavery, including human trafficking, through the National Referral Mechanism.[89]

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[82] ILO, "Regulating international labour recruitment in the domestic work sector: a review of key issues, challenges and opportunities" (Geneva, 2016).

[83] Submission of ILO Ethiopia.

[84] See Overseas Employment Proclamation No. 923/2016.

[85] See *The National*, "GCC working on unified domestic worker policy", 15 April 2018.

[86] See the ILO fair recruitment initiative, available at www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm.

[87] Submission of PICUM, GAATW and La Strada International.

[88] Ibid.

[89] United Kingdom and Dominican Republic, submissions for the present report.

However, major challenges regarding the identification of victims persist in the absence of regular labour inspections in private homes.

67. Despite the continuing existence of significant obstacles to access to justice, judgments have been issued in several countries in favour of domestic workers who had suffered exploitation, abuse or even death. In France in January 2018, a couple was sentenced to three years in prison for human trafficking after taking a domestic worker from Dubai to France, where she worked in conditions of forced labour.[90] The couple was required to pay a fine and compensation to the victim. Similarly, in May 2018 a migrant domestic worker who was fired without cause in Canada won severance pay in a lawsuit with the help of a non-profit agency that provided legal support. Given the gravity of the circumstances, however, some sentences seem disproportionately lenient. In one country, a couple who had starved their domestic worker were sentenced to 10 months in jail in 2017. In another country, the criminal court issued a judgment against the employer of a migrant child domestic worker who had been abused and exploited. The employer was sentenced to six months in prison, among other penalties, in 2010.

68. In Uruguay, the first ever labour inspection in a private home, which took place in 2012, led to the identification of violations of the labour rights of three migrant domestic workers and the employers were required by the administrative tribunal to pay them compensation.[91] In the United Kingdom, three cases of alleged domestic servitude have been investigated since 2017 but without prosecution so far. In 2016, the country did, nevertheless, implement some changes in the immigration rules to the effect that migrant domestic workers, including those in diplomatic households, are now allowed to change employer within the six-month validity of their visa, among other measures.[92] The victims' rights directive of the European Union also applies to migrant domestic workers who are victims of labour exploitation that amounts to a criminal offence, including trafficking in persons. It explicitly applies to undocumented migrants and sets out minimum standards for rights, although implementation for undocumented victims of crime remains limited.

69. In the Middle East, Qatar ended the *kafala* system in 2017 and a maximum 10-hour workday, a weekly rest day and other measures to protect domestic workers from exploitation were introduced. Nevertheless, domestic workers still have fewer protections than other workers.[93] Kuwait and the United Arab Emirates recently adopted new regulations which are aimed at improving the working conditions of domestic workers.[94] Saudi Arabia and the Philippines signed a bilateral agreement in 2013 that contains specific provisions for joint regulation of private employment agencies. The agreement was the first of its kind to be signed by a country of origin in Asia and a destination country in the Middle East.[95] In 2017, the United Arab Emirates set up a special prosecution unit to try cases that involve the abuse of Filipino domestic workers.[96] However, despite the positive legislative changes introduced by some Middle Eastern countries, implementation and enforcement remain major challenges.[97]

70. The formation of workers' organizations covering migrant domestic workers, as well as their access to social dialogue mechanisms, such as collective bargaining, is critical to ensure that their voices are heard and that servitude and slavery-like conditions are prevented.[98] The Domestic Workers Convention requires ILO members to protect the right of domestic workers and their employers to establish and join organizations, federations and confederations. However, only a few countries have ratified the Convention and the

[90] Submission of Comité Contre l'Esclavage Moderne.
[91] Uruguay, submission for the present report.
[92] Submission of the United Kingdom.
[93] See Human Rights Watch, "Qatar: fix gaps in domestic worker law" (26 June 2018).
[94] See Rothna Begum, "Gulf States' slow march toward domestic workers' rights", Human Rights Watch (June 2017).
[95] ILO, "Regulating international labour recruitment in the domestic work sector".
[96] See *The National*, "GCC working on unified domestic worker policy".
[97] ILO Regional Office for Arab States, "Domestic workers and employers in the Arab States: promising practices and innovative models for a productive working relationship" (2017).
[98] ILO, *Care Work and Care Jobs for the Future of Decent Work*.

reality is that migrant domestic workers face practical and legal obstacles to organizing, including isolation, limited time and freedom of movement, fear of reprisals, language barriers and an absence of public gathering areas. In addition, many trade unions exclude migrant workers and particularly undocumented migrants, while in some countries migrants are not allowed to form or join unions.[99] For example, Gulf Cooperation Council countries deny domestic workers the right to form unions to claim their rights.[100]

71. Other initiatives to promote and protect the rights of migrant domestic workers have focused on safe migration pathways, education, fair recruitment and decent work for women in countries of origin and destination, such as the "Work in freedom" programme led by ILO in South Asia and the Middle East. Other programmes have integrated pre-departure training with post-destination community-building in order to provide migrant domestic workers with information about their rights and facilitate networking between them.[101] For example, in Germany, a non-governmental organization used posters that looked like advertisements from countries of origin, such as China, the Philippines and Thailand, and in the respective languages, whereby domestic workers were informed of where to seek confidential advice in case of abuse.[102]

VIII. Conclusions and recommendations

A. Conclusions

72. The human rights situation of domestic workers, including of migrant workers in domestic servitude, remains largely invisible, as it is confined to the private sphere. However, it is directly related to increasing globalization, macroeconomic policies which reinforce inequality and poverty, climate change and demographic changes that push women into migration. How care and domestic work are carried out is crucial to the future of decent work. By applying a human rights perspective, domestic servitude can be replaced with decent work and social justice, and a workplace free of violence and harassment.

73. Domestic workers can overcome their invisibility and promote decent work through representation in workers' organizations and by having access to collective bargaining, providing them with a voice to change exploitative working conditions. Effective collective bargaining of the domestic sector at the national level needs to be supported by a social dialogue involving tripartite partners in countries of origin, transit and destination. The active involvement of private recruitment agencies in that process is also critical to addressing the current challenges related to migrant domestic workers across international borders.

74. The right to freedom from servitude is violated when the State fails to take adequate measures to protect individuals from activities by private persons that amount to servitude. Duties exist on the part of both sending and receiving States.

75. One of the key challenges remains the identification of migrant workers in domestic servitude in the current context. A global rise in anti-migrant sentiment in many countries in recent years has been accompanied by harsher migration policies adopted by numerous Governments and by an excessive focus on the immigration status of the victims. As a consequence, irregular migrants, in particular, are more likely to be treated as perpetrators of an immigration offence than victims of domestic servitude entitled to protection, assistance and redress.

76. In some countries, progressive legislative and policy frameworks exist but their implementation is weak, owing to a lack of institutional capacity, the dispersion of the

[99] Global Alliance Against Traffic in Women, "Beyond borders: exploring the links between trafficking and labour" (2010).

[100] Human Rights Watch, "Middle East failing to protect domestic workers" (28 October 2013).

[101] Submission of Anti-Slavery International.

[102] Submission of PICUM, GAATW and La Strada International.

workforce in private homes and underlying social norms which mean that domestic work is not regarded as "real work". Discriminatory attitudes are particularly strong drivers where migrant domestic workers are also members of marginalized communities, such as caste-affected groups and indigenous groups, when their employers are from higher castes or are socially powerful. States must therefore reinforce their efforts to identify victims and potential victims of servitude, considering that migrants in vulnerable situations are always at high risk of falling prey to traffickers and of becoming victims of contemporary forms of slavery.

77. Another challenge relates to the fact that international human rights law and international labour law are not understood as applying to domestic workers and that ratification and implementation of existing international instruments and mechanisms which contribute to the prevention of domestic servitude, such as the Domestic Workers Convention, remain limited.

78. Generally, more attention is paid to human trafficking for sexual exploitation than to exploitation for forced labour, including servitude in the domestic sphere. A victim-centred approach needs to be applied to all victims of contemporary forms of slavery to ensure equal treatment, regardless of the sector of prevalence.

79. Victims of domestic servitude continue to face major obstacles in accessing justice owing to their dependency on the employer; minimal employer accountability owing to an absence of international standards in this area; widespread passport retention by the employer; poor enforcement of laws against employment agencies; a significant imbalance of power between employers and domestic workers that exacerbates vulnerability and abuse; a lack of knowledge of or reluctance to use existing complaint mechanisms by workers; and a lack of conceptual clarity around forced labour which, compounded with frequent psychological coercion, impacts on the identification of forced labour situations and the credibility and quality of prosecutions.

80. In formulating policy responses to ensure that migrant domestic workers do not become subject to slavery or servitude, States should note that not all women in domestic work are equally vulnerable. An intersectional approach to domestic servitude is therefore needed, recognizing the specific ways in which different women are affected.

81. The effective fulfilment of the Sustainable Development Goals and in particular of Goal 8 on the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all is directly linked to the prevention of domestic servitude. The Sustainable Development Goals agenda therefore provides a unique opportunity to reverse inequalities at the national, regional and global level, and to provide dignifying economic opportunities to all, including to migrant domestic workers.

B. Recommendations to States

82. To effectively prevent and combat domestic servitude, to ensure the protection of migrant women and their access to decent work, the Special Rapporteur recommends that States:

(a) Create viable, accessible and non-discriminatory employment options for women as a sustainable alternative to poverty and to prevent exploitation;

(b) Implement international human rights law and international labour law to ensure protection of the fundamental human rights of migrant domestic workers;

(c) Ratify and implement the ILO Domestic Workers Convention, 2011 (No. 189) and the Protocol of 2014 to the Forced Labour Convention, 1930, and implement the core conventions, including the Forced Labour Convention and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;

(d) **Support the adoption of an ILO instrument on ending violence against and harassment of women and men in the world of work, including in paid care work;**

(e) **Enact and enforce criminal legislation prohibiting slavery, servitude and forced labour;**

(f) **Adopt and implement labour and social protection laws which extend to all domestic workers, including migrant domestic workers;**

(g) **Guarantee equal access for migrant women to services such as health care, including sexual and reproductive health care, and social protection. Also ensure that they have access to information materials in relevant languages;**

(h) **Guarantee the rights to assembly and to freedom of association for workers, including migrant domestic workers;**

(i) **Allow for collective bargaining in the domestic sector by promoting social dialogue involving tripartite partners in countries of origin, transit and destination;**

(j) **Avoid the isolation of domestic workers by ensuring their freedom of movement and access to communication;**

(k) **End sponsorship systems and prohibit the retention of passports or other identity documents by employers, introduce an independent immigration status and grant a grace period to migrant domestic workers to find new employment when leaving an employer;**

(l) **Establish accessible, safe and effective complaint mechanisms for victims of domestic servitude in order to increase the number of incidents reported;**

(m) **Investigate all allegations of domestic servitude with due diligence by also ensuring that victims of servitude have effective access to a remedy without discrimination;**

(n) **Reinforce efforts to identify perpetrators of domestic servitude and bring them to justice, including by developing and implementing measures for regular and proactive labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work;**

(o) **Make the inclusion of a gender perspective a strategic priority of labour inspectorates;**

(p) **Adopt measures to facilitate the recovery and reintegration of victims of servitude, inter alia by providing support services including access to health care, counselling, vocational training and legal aid;**

(q) **Promote informed decision-making and a shift in the attitudes of employers regarding the human rights of domestic workers, including of migrants, through awareness-raising and information campaigns in languages understandable to migrant workers;**

(r) **Engage with Alliance 8.7, a global multi-stakeholder platform promoting implementation of target 8.7 of the Sustainable Development Goals;**

(s) **Ensure that national migration policies are in compliance with international obligations to respect, protect and fulfil the human rights of all persons within the jurisdiction of a State, irrespective of the migration status of individuals. On that basis, adopt gender-responsive migration policies, programmes and services, and safe, orderly and regular migration pathways, including for women and girls, as a means of preventing domestic servitude and other types of contemporary forms of slavery. Women should actively participate in decision-making regarding their safety and protection;**

(t) **Ensure that migrant women have access to the regular labour market in the host country;**

(u) **Ensure that women and girls vulnerable to labour exploitation are promptly identified and referred to gender-sensitive services on arrival, in transit and in destination countries;**

(v) **In destination countries, clearly separate labour inspection, immigration management and law enforcement. Ensure that the labour inspectorate is proactive, adequately resourced and entitled to conduct inspections of private households;**

(w) **Regulate and monitor private recruitment agencies and sub-agents by explicitly prohibiting fraudulent and exploitative recruitment practices. Consider concluding bilateral, regional or multilateral agreements to prevent abuses in recruitment, placement and employment;**

(x) **In cooperation with civil society, trade unions and ethical recruiters, establish policies which favour and support ethical recruitment practices.**

C. Recommendations to other stakeholders

83. **National human rights institutions should become more involved in promoting and protecting the rights of domestic workers and of migrant workers.**

84. **Civil society organizations should monitor the elaboration and implementation of relevant legislation to protect the rights of domestic workers, including migrants.**

85. **Civil society organizations can facilitate the engagement of returning migrant workers through awareness-raising campaigns as a means of providing relevant information to potential migrants and to promote informed decision-making by them.**

86. **Anti-slavery civil society organizations working at the community level and women's rights movements need to work together to influence policy change and to effectively promote and protect the rights of migrant domestic workers.**

87. **Anti-slavery organizations should strengthen their efforts in appointing women in leadership positions in order to effectively represent the interests of women affected by slavery, including servitude.**

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Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her mission to Paraguay

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her mission to Paraguay from 17 to 24 July 2017. On the basis of information gathered prior to and during her visit, the mandate holder highlights the positive steps taken by the Government of Paraguay to prevent and eradicate contemporary forms of slavery, including significant reductions in the worst forms of child labour, developments in the national legal and institutional framework, regional engagement on issues relating to exploitation, including contemporary forms of slavery, and efforts to bring an end to forced labour. She makes recommendations to the Government of Paraguay on how to continue and build on progress made through a comprehensive and multifaceted programme of action that includes steps to eradicate and prevent all contemporary forms of slavery, and to provide access to justice for all victims. In the report, the mandate holder describes how the Government can close protection gaps to ensure that all people, including indigenous peoples, vulnerable children and female domestic workers, are protected against all forms of contemporary slavery.

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Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her mission to Paraguay*

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* Circulated in the language of submission and in Spanish only.

I. Introduction

1. The Special Rapporteur on contemporary forms of slavery, including its causes and consequences Urmila Bhoola visited Paraguay from 17 to 24 July 2017. During her visit, she met with officials from a broad range of government departments, including the Ministry of Foreign Affairs, the Ministry of Labour, Employment and Social Security, the Ministry for Women, the Secretariat for Children and Adolescents, the Public Ministry, the Ministry of Justice, the Ministry of Education and Science, the human rights ombudsman (*Defensoría del Pueblo*), the Ministry of the Public Defender, the national congress, the Supreme Court, the National Institute for Indigenous Peoples (INDI) and the National Commission for the Elimination of Child Labour (CONAETI).

2. The Special Rapporteur also visited relevant programme sites, including a centre operating a helpline (*Fono Ayuda*) for children and adolescents at risk or who are victims of exploitation, and a childcare centre linked to the Abrazo programme (to protect the rights of children by reducing their vulnerability to exploitation and other human rights abuses). She also met with the Resident Coordinator, the United Nations country team, the members of the Paraguay office of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and representatives of a number of non-governmental organizations, trade unions, indigenous organizations and private sector stakeholders. The meetings and visits were conducted in the capital Asunción, and in Filadelfia and Neuland in the Chaco region.

3. The Special Rapporteur extends her thanks to the Government of Paraguay for the invitation to visit the country and to officials from different State entities for engaging in a fruitful and meaningful dialogue. She also thanks the personnel of the Paraguay OHCHR office for their comprehensive assistance in the planning and conduct of her visit, and the Resident Coordinator and the United Nations country team for their input and support. Lastly, the Special Rapporteur expresses her sincere appreciation to all civil society organizations, trade unions, indigenous organizations, business associations and individuals who took the time to meet and share their experiences with her.

II. Background

A. Economic and political situation

4. Paraguay is an upper-middle-income, landlocked country in the southern cone of Latin America, with a population of 7 million. Although it has witnessed sustained growth in GDP over the past five years, it continues to be affected by significant levels of both poverty and inequality, and is one of the poorest countries in the Latin American region. The population is relatively young, given that around 45 per cent of inhabitants are aged between 0 and 25 years. The country faces significant logistical challenges, and lacks mineral and petroleum resources, which makes it heavily dependent on neighbouring countries, particularly Brazil and Argentina, which are fellow members of the Southern Common Market (MERCOSUR). The economy is primarily agricultural, and is therefore particularly vulnerable to weather conditions and developments in the global economy that have an impact on demand for and the price of commodities. A large proportion of the Paraguayan population derives its living from farming, often on a subsistence basis. Key crops are soybeans, cotton and meat. The market economy is characterized by its large informal sector driven by thousands of microenterprises and urban street vendors. A significant part of the country's trade is based on goods imported from the United States of America and Asia for re-export to neighbouring countries. Most imported goods are not declared to customs, thereby depriving the State of a substantial amount of tax revenue.[1]

[1] See World Bank, "The World Bank in Paraguay" (available from www.worldbank.org/en/country/paraguay/overview). According to the Special Rapporteur on the right to food, 94 per cent of agricultural land in Paraguay is used for export crops, and between 60 and 80 per cent of land belongs

5. Information received by the Special Rapporteur during her mission suggested that Paraguay faces a number of complex and cross-cutting challenges that compound the vulnerability of individuals to contemporary forms of slavery, and that the Government's capacity to respond to such phenomena was limited. The challenges include resource constraints and the weak impact of government institutions resulting from, inter alia, difficulties in providing universal coverage of services throughout the country; generalized patterns of persistent discrimination, including discrimination on the basis of gender, age and minority status; the weakening of the social fabric; and periods of social instability and civil unrest.

B. Legal framework

1. International and regional legal framework

6. Paraguay has ratified the core international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The State has yet to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

7. In 2007, Paraguay acceded to the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

8. Paraguay has also ratified the core conventions of the International Labour Organization (ILO) relating to forced labour, child labour and its worst forms, including the Forced Labour Convention, 1930 (No. 29) and the Protocol thereto, the Abolition of Forced Labour Convention, 1957 (No. 105), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Minimum Age for Employment Convention, 1973 (No. 138) and the ILO Declaration on Fundamental Principles and Rights at Work. The State has also ratified the Domestic Workers Convention, 2011 (No. 189).

9. In addition, Paraguay has ratified all relevant regional standards for protection against contemporary forms of slavery, including the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the Protocol of San Salvador.

2. National legal framework

10. A number of national legal provisions pertain to the elimination of all contemporary forms of slavery. Slavery is prohibited by the Constitution, while slavery and forced labour are criminalized in the Penal Code. In 2015, child domestic work was prohibited by law No. 5.407, which also raised the minimum wage for domestic work. The practice of unpaid domestic child labour (*criadazgo*) is also prohibited in the forms of hazardous work for children listed in Decree No. 4951. Also with regard to *criadazgo*, the Comprehensive Act to Combat Trafficking in Persons (Act No. 4788/12) was passed in 2012. The law has led to instances of the practice being prosecuted as internal trafficking offences. Other relevant laws and provisions include the Code on Children and Adolescents (law No 1.680/01), which is the main piece of legislation on children's rights, and the 1993 Labour Code, which provides labour rights protection for Paraguayan citizens.

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to 2 to 3 per cent of the population (see A/HRC/34/48/Add.2). See also CIA, The World FactBook, Paraguay, at www.cia.gov/library/publications/the-world-factbook/geos/pa.html.

C. Institutional and policy framework

11. Paraguay has a comprehensive institutional and policy framework that protects children from the worst forms of child labour and prohibits forced labour, domestic servitude and other extreme forms of labour exploitation that could be characterized as contemporary forms of slavery. In 2013, the Government committed to strengthening the National System for the Protection and Promotion of the Rights of Children (SNPPI). Various multi-sectoral coordination bodies have been established, including the National Commission for the Elimination of Child Labour (CONAETI), an institutional round table on child labour and the National Commission on Forced Labour. The new Ministry of Labour, Employment and Social Security has also worked in partnership with ILO to increase the capacity of the labour inspectorate and to decentralize the services provided by the Ministry. The Government has also made efforts to develop its institutional capacity to address women's rights and gender equality, including the work of the Ministry of Women, to ensure the mainstreaming of equal opportunities for women in employment.

12. The Special Rapporteur received information about the work of the Secretariat on Children and Adolescents in building a comprehensive national child protection system, including the creation of a call centre to report violations of children's rights (Fono Ayuda 147), the Abrazo and Tekoporã social support programmes, municipal-level coordination and the multi-disciplinary Municipal Advisory Service on the Rights of Children and Adolescents (CODENI), which responds to reports of violations of children's rights, including those relating to contemporary forms of slavery.

13. The Special Rapporteur also received information about a number of different policies, including the National Strategy for the Prevention of Forced Labour 2016–2020, the National Development Plan and the National Human Rights Plan, all of which contribute to the formulation of a policy framework for the prevention of contemporary forms of slavery and for addressing poverty and economic exclusion, as well as the root causes of extreme labour exploitation in the informal sector.

III. Addressing contemporary forms of slavery

14. The Special Rapporteur noted a number of positive developments in the Government's response to contemporary forms of slavery during her visit to Paraguay.

A. Legal, institutional and policy framework

15. As noted above, the Special Rapporteur received a large amount of information about the legal, institutional and policy framework in place to address contemporary forms of slavery. In general, the provisions appeared to be robust and effective, and a positive development in addressing contemporary forms of slavery; the mandate holder therefore commends the Government of Paraguay on their development in spite of the significant cross-cutting challenges and fiscal constraints that it faced. The Special Rapporteur particularly noted the commitment of the Government, reflected in the work of the Secretariat on Children and Adolescents, to building a comprehensive child protection system, and was impressed by the knowledge and dedication of those officials working in the sector whom she met.

16. The Special Rapporteur also noted the engagement of the Government of Paraguay with the United Nations and the efforts it has made to implement relevant recommendations to strengthen its legal, institutional and policy framework. She commends the Government for the development, in association with OHCHR Paraguay, of the Recommendations Monitoring System (SIMORE), a comprehensive electronic system for monitoring country-level implementation of recommendations made by human rights mechanisms, relating also to the Sustainable Development Goals. SIMORE also provides an interactive platform for the involvement of civil society, and allows for the effective monitoring of the State's compliance with its international human rights commitments.

17. Although the State's legal, policy and institutional framework is a solid foundation for addressing contemporary forms of slavery, the Special Rapporteur received reports of enforcement gaps that undermine the legal and policy framework, limit capacity and create other constraints in certain government institutions.

B. Changes in social attitudes

18. Another positive development on which the Special Rapporteur received information from a number of stakeholders was the perceived shift in social and cultural attitudes reflecting a greater awareness of various forms of exploitation and the perception of them as violations of human rights. Stakeholders informed the Special Rapporteur that exploitative practices were once viewed as more socially acceptable are today more likely to be denounced as contemporary forms of slavery.

19. According to information received by the Special Rapporteur, attitudes towards the exploitation of children have significantly changed. Practices such as *criadazgo* and forced begging, are seen as less socially acceptable and even as a violation of the rights of children. The Special Rapporteur was informed of people taking to the streets to protest against the violence and abuse of children in situations of *criadazgo*, exemplifying this shift in attitude. In this regard, the Special Rapporteur also notes the sensitization and awareness-raising campaigns organized by the Government, such as the "No al criadazgo" campaign organized by the Secretariat on Children and Adolescents, and the awareness-raising activities conducted by civil society organizations working on related human rights issues.

20. Such changes in social attitudes play an important role in the elimination of contemporary forms of slavery. When exploitation is no longer considered socially acceptable, it deters potential perpetrators of contemporary forms of slavery, and individuals are more likely to report violations, thus contributing to their detection and to the rescue of victims.

C. Compliance with labour standards

21. A number of stakeholders with whom the Special Rapporteur met in both the capital and the Chaco stated that, in recent years, improvements had been witnessed in the degree of compliance with labour standards, as had a decrease in the prevalence of exploitation. According to indigenous stakeholders in the Chaco, international attention to labour practices in cooperatives and ranches had improved compliance with national law. The business stakeholders that the Special Rapporteur met with in the region appeared to have a clear understanding of relevant national and international labour standards, describing in detail the improvements seen in compliance in recent years, and expressing their commitment to uphold such standards.

22. Various stakeholders mentioned that they had witnessed reductions in the number of children subjected to *criadazgo* and other worst forms of child labour, mainly as a result of increasing public awareness. Data on the exact number, however, are still lacking, and those that are available indicate that a large number of children are still involved in child labour and in hazardous work. According to a national survey on child and adolescent activities conducted in 2011,[2] 27.2 per cent of the population aged between 5 and 17 years were engaged in child labour (consisting in work performed by children below the minimum age for admission to employment, which is 14, and hazardous adolescent work). The survey also found that, of the more than 436,000 children between 5 and 17 years of age forced to perform some type of labour, 95.4 per cent were engaged in work that had

[2] See Magnitud y características del trabajo infantil y adolescente en el Paraguay: Encuesta Nacional de Actividades de Niños, Niñas y Adolescentes, EANA 2011, ILO, 2013 (available at www.dequeni.org.py/es/userfiles/files/paraguay-informe-actividades.pdf).

negative consequences for those engaged in it, while 22 per cent performed one of the worst forms of child labour (including child slavery).[3]

23. A survey of activities conducted by children and adolescents living in rural areas, found that, of 810,352 children and adolescents between the age of 5 and 17 years living in rural areas, 50.2 per cent of them (406,358) were involved in work related to agriculture and cattle-raising, while more than 75 per cent were engaged in one or more of the worst forms of child labour.[4]

24. The Special Rapporteur also received information about programmes implemented in the cotton sector to reduce child labour, the new National Strategy for the Prevention and Elimination of Child Labour and the Protection of Working Adolescents, and the coordination of National Commission for the Elimination of Child Labour (CONAETI) on this issue.

D. Sustainable Development Goals

25. As described by the Special Rapporteur in her latest report to the General Assembly (A/72/139), the inclusion of a target on contemporary forms of slavery in the 2030 Agenda for Sustainable Development, and of measures to address the root causes and consequences of exploitation of this type, is a historic opportunity to galvanize efforts to eliminate all forms of contemporary slavery. The Special Rapporteur therefore regards the information that she received from stakeholders during her visit about measures taken by the Government of Paraguay, in partnership with the United Nations country team, to implement the Sustainable Development Goals as a positive development. The measures included the establishment of a national commission on implementation, led by the Ministry of Foreign Affairs, and efforts to raise the awareness of local governments about the Sustainable Development Goals in order to advance the national strategy.

26. The Special Rapporteur encourages the Government of Paraguay, the United Nations country team and the international community to ensure that achievement of target 8.7, on taking immediate and effective measures to eradicate forced labour, ending modern slavery and human trafficking and securing the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms, is integrated into these efforts as a core part of the 2030 Agenda. She also encourages them to ensure that adequate technical and financial resources are dedicated to the effective implementation of all of the Sustainable Development Goals.

IV. Issues of concern

27. As mentioned above, the Special Rapporteur is persuaded that the Government of Paraguay is taking a number of positive steps to implement its obligations under relevant international legal standards relating to contemporary forms of slavery, its causes and consequences, and that it has made progress in reducing extreme forms of labour exploitation that constitute slavery.

28. The Special Rapporteur nonetheless received information about a number of issues of concern. Stakeholders reported the continued existence of multiple forms of exploitation, including those that constitute contemporary forms of slavery, such as forced labour and domestic servitude. Many stakeholders expressed their concern at trends and issues that determine the overall vulnerability of individuals to slavery, and referred to reports of protection gaps for particular groups, such as indigenous peoples and children from poor, rural areas, and to ongoing social exclusion.

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[3] Ibid., pp. 45–48.

[4] Trabajo infantil y adolescente en el sector rural agrícola, pecuario, forestal y de pesca o piscicultura en Paraguay – Encuesta de Actividades de Niños, Niñas y Adolescentes: EANA Rural 2015, ILO, Dirección General de Estadística, Encuestas y Censos del Paraguay (DGEEC), Geneva, 2016, p. xviii.

A. Cross-cutting weaknesses in government responses

29. As mentioned above, the legal, institutional and policy framework in Paraguay is broadly robust and represents a positive development in the fight against extreme exploitation. During her visit, however, the Special Rapporteur also received information from a range of stakeholders about issues concerning the full and effective implementation of legal and policy standards and cross-cutting weaknesses in government responses. Many informed her that government programmes and services (including, for example, the labour inspectorate, social support programmes targeting vulnerable families and initiatives to address the worst forms of child labour) do not have universal geographical coverage in Paraguay. According to the information received, the programmes and services often do not reach poor, rural and socially excluded groups, including indigenous communities in the Chaco. While noting the challenges that the Government faces, given the concentration of the population around the Asunción area and low population density in other regions, the Special Rapporteur urges it to take further steps to ensure the full geographical coverage of all programmes and services for vulnerable and marginalized groups.

30. The Special Rapporteur also expresses her concern at reports received of insufficient funding for institutions to perform key functions, which affects efforts to end forced labour, the worst forms of child labour, *criadazgo* and other contemporary forms of slavery. The Special Rapporteur was informed by representatives of civil society bodies that, while the macroeconomic policy of attracting foreign investment to promoting agribusiness (such as soya production and cattle farming) and establishing *maquiladoras* (manufacturing plants that import and assemble duty-free components for export) bolsters the economy, poverty and inequality continue. The fiscal benefits received by private businesses[5] are not passed on in the form of job creation or social development for poorer communities. The policy aimed at transforming the country into a low-tax haven, with low minimum wages and labour market and administrative flexibility creates a situation whereby forced labour, child labour and hazardous child labour thrive, as many families send their children to work in order to survive. The policy also facilitates labour exploitation and obscures the State's lack of investment in public policies. The agro-export economic model, the Special Rapporteur was informed, has also led to widespread displacement: people have been expelled from the Chaco, and *campesinos* (rural workers) forced into urban areas, where they live in informal settlements along the river. Social investment has dropped while structural problems perpetuate discrimination and the marginalization of vulnerable and indigenous peoples, compounding their vulnerability and leading to their entrapment in contemporary forms of slavery.

31. Another cross-cutting issue of concern is the perceived lack of a full understanding of contemporary forms of slavery in Paraguay. The Special Rapporteur did not receive the impression that the real prevalence of contemporary forms of slavery and the impact on victims were fully understood by the Government of Paraguay. She believes that its efforts to tackle such exploitation could benefit from an analysis of prevalence trends, including of the sectors in which contemporary forms of slavery are most common, which groups are most affected and what risk factors make individuals vulnerable to such exploitation. The Special Rapporteur at times had the impression that some stakeholders had little awareness of what actually constitutes a contemporary form of slavery. Overall efforts to combat contemporary forms of slavery could therefore benefit from sensitization and awareness-raising activities with regard to the obligations of the conventions on slavery (see para. 7 above) and other relevant international legal standards.

B. Decent work deficits

32. According to ILO, decent work is characterized by opportunities for work that are productive and provide a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for

[5] Thanks to article 29 of law no. 1065/97, maquiladoras are subject to a tax rate of only 1 per cent.

people to express their concerns, organize and participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men.[6] The Special Rapporteur has consistently affirmed throughout her mandate that decent work is a powerful protection against contemporary forms of slavery, can alleviate poverty and provide security for people, allowing them to meet basic and other needs. Decent work also creates conditions under which workers can unionize and protect themselves and others against contemporary forms of slavery and other human and labour rights abuses. Global trends have shown significant and sustained deficits in decent work, resulting in both higher unemployment and extremely high levels of precarious work. In line with such global trends, many stakeholders reported to the Special Rapporteur during her visit that there are significant decent work deficits in Paraguay, which she believes are increasing the vulnerability of individuals to contemporary forms of slavery.

33. A major factor behind decent work deficits in Paraguay is the extent of the informal economy, which, according to official data, employed 65.4 per cent of workers. In rural areas, the proportion of workers employed in the informal economy reached 78 per cent (against 61.7 per cent in urban areas).[7] Workers in the informal economy — who are more likely to be women — are often subject to a high degree of precariousness, have no access to social or workplace protection (a fundamental feature of decent work) and work in sectors not fully covered by labour laws, making them highly vulnerable to exploitation, including contemporary forms of slavery. Official data have shown that, in 2016, 68.1 per cent of women in Paraguay worked in the informal economy, as against 63.3 per cent of men.[8] The Special Rapporteur takes note of reports of progress in the formalization of the Paraguayan economy, and encourages the Government in its efforts, which will create more decent work opportunities.

34. According to ILO, decent work is also characterized by a fair income. During her visit, the Special Rapporteur received information about the low minimum wage in Paraguay, which she believes contributes to the lack of decent work. Paraguayan law sets the minimum wage at around $400 a month, which many stakeholders reported was not sufficient to meet the basic needs of workers and their family members. They also informed the Special Rapporteur that the low minimum wage was part of an overall economic development regime implemented by the Government, which prioritizes competitiveness for foreign direct investment within a competitive regional market. While the Special Rapporteur recognizes the challenges that the Government faces in creating conditions for growth and development, and the important role that such conditions can play in creating employment opportunities, creating conditions for growth through external investment cannot come at the expense of the human and labour rights of citizens. She cautions the Government against structuring the national economy in a way that will attract foreign investment but entrench vulnerability to exploitation, including contemporary forms of slavery; she therefore urges it to consider fully how the creation of decent work opportunities can be integrated into economic development, including by assessing the feasibility of increasing the minimum wage.

35. According to reports received by the Special Rapporteur, the lack of universal compliance with minimum wage laws and other labour market protections in Paraguayan law also contributes to a lack of decent work. The Special Rapporteur was informed that domestic workers, mainly women and girls, were paid a combination of in-kind services and cash, and that they therefore did not actually receive the minimum wage. She also received reports about a lack of compliance by some employers with minimum wage provisions in relevant laws, and the lack of capacity in the labour inspectorate (only 25 labour inspectors for the whole country) to monitor and enforce relevant provisions of the labour code (according to the information received, the labour inspectorate is small and its

[6] ILO, "Decent work" (see www.ilo.org/global/topics/decent-work/lang--en/index.htm).

[7] Ministerio de Trabajo, Empleo y Seguridad Social, "Ocupación, Desempleo, Subocupación y Ocupación Informal: Encuesta Permanente de Hogares", Nuevas Series, 2002–2016. August 2017, p. 10 (see http://sinafocal.gov.py/application/files/8615/0288/3984/Ocupacion_Desempleo_Subocupacion_y_Ocupacion_Informal._2002-2016._Final.pdf).

[8] Ibid.

capacity is centralized in Asunción). Such a situation could create a culture of impunity in certain regions and sectors, leaving workers highly vulnerable to exploitation, including contemporary forms of slavery. The Special Rapporteur did in fact receive information from stakeholders according to which the Government of Paraguay had taken steps, in partnership with ILO, to increase the capacity of the labour inspectorate. She commends such initiatives and urges it to take further steps to build on and expand these efforts.

C. *Criadazgo*

36. As part of the fulfilment of her mandate, the Special Rapporteur consistently pays attention to the vulnerability of children to contemporary forms of slavery and its impact on them. During her visit, the mandate holder received multiple reports of the phenomenon of *criadazgo* (see para. 10 above). Despite its inclusion in the worst forms of child labour listed in Decree No. 4951, alongside child domestic work, *criadazgo* is not defined in Paraguayan law nor is it criminalized under the national regulatory framework.

37. Reports received by the Special Rapporteur suggest that the practice has different forms in Paraguay, and that the understanding of what the phenomenon constitutes also varies from one stakeholder to another. Broadly speaking, *criadazgo* refers to the practice whereby a child (usually a girl) from a poor rural household is sent to live with another family in an urban area, ostensibly to secure access to food and education. Once in the new household, the child undertakes domestic work for the receiving families, which is normally not remunerated. According to information received by the Special Rapporteur, there were 46,933 cases of *criadazgo* in Paraguay, which accounts for approximately 2.5 per cent of the total number of children under 18 years of age in the country. Although there has reportedly been a significant reduction in the number of the children engaged in *criadazgo*, which is considered under ILO Convention No. 182 to be one of the worst forms of child labour, the number of children living away from their parents and engaged in a form of domestic labour is still too high.

38. Some reports received by the Special Rapporteur during her visit suggested that *criadazgo* was not inherently an exploitative practice, and that it could even improve the situation of children from very poor households. The Special Rapporteur believes, however, that such a view reflects the former acceptability of the practice, aggravated by the lack of clarity and conceptual understanding of it. In many cases, *criadazgo* constitutes a contemporary form of slavery. According to information received, children often become particularly vulnerable to violence and abuse. A study conducted in 2013 by the International Organization for Migration found a close correlation between sexual violence and *criadazgo*; indeed, some 90 per cent of all victims of sexual violence had been in a situation of *criadazgo*.[9] While in Paraguay, the Special Rapporteur was shocked to learn of cases of extreme physical abuse of children by the families for which they were working, including both murder and sexual violence. She was informed about an extreme case of abuse of a child in a situation of *criadazgo*, abuse that included sexual violence and burning after being forced to drink bleach. The child was subsequently hospitalized, while her case was taken to the Inter-American Commission for Human Rights, leading to the issuance of precautionary measures to Paraguay (resolution 7/17, PM 68/17 — The Adolescent Panambi). Even in cases where the children are not subject to such horrific violence, *criadazgo* does nonetheless make them vulnerable to exploitation, beside the fact that their separation from their families and engagement in domestic work can hardly, if at all, be considered in their best interests. Since the practice seems to be linked to family poverty and was initially a means of ensuring access to education for rural children, these issues should be addressed by the Government.

39. A significant legal protection gap seems to exist in the case of *criadazgo*, mainly because it is not defined in law with related penal and civil penalties despite

[9] International Organization for Migration, La Trata de Personas en el Paraguay: Diagnóstico exploratorio sobre el tráfico y/o trata de personas con fines de explotación sexual, Buenos Aires, 2005, p. 77.

recommendations made by the Committee on the Rights of the Child thereon in 2010 (see CRC/C/PRY/CO/3). *Criadazgo* and domestic work are indeed included in the hazardous work for children listed in Decree No. 4951; and according to a law on domestic work adopted in 2015, domestic work is prohibited for children under 18 years (the Special Rapporteur received reports suggesting that this prohibition is not universally enforced), while child labour is prohibited by the Code on Children and Adolescents. Such measures do not, however, fully address the specificities of *criadazgo* as a non-remunerated form of labour, something that is seen in certain communities as a practice that benefits the child and the child's family.

40. The Special Rapporteur was informed of cases of *criadazgo* that were prosecuted as a form of internal trafficking. While this is a positive development, the Special Rapporteur is concerned that the protection provided by the anti-trafficking law applied in those cases would not extend to other cases whereby the child was not moved. She reminds the Government of Paraguay of its obligation under the conventions on slavery (see para. 7 above) to criminalize all forms of slavery and slavery-like practices as standalone offences, separate from the phenomenon of trafficking. While recognizing the strong links between contemporary forms of slavery and trafficking in persons, the Special Rapporteur believes that ensuring that obligations under the said conventions are fully implemented, alongside those outlined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, will help to prevent protection gaps and to ensure a comprehensive approach to all types and forms of exploitation.

41. The Special Rapporteur was also informed about attempts to define and criminalize *criadazgo* that are currently before the legislature, a development for which she commends the Government. She urges the Government to accelerate efforts to pass such legislative provisions, given that such a law would aid detection and prosecution of *criadazgo* and help to challenge cultural attitudes that lead to the exploitation of children. In its efforts, the Government should also focus on the punishment of those who seek to profit from the difficult situations that vulnerable families face, and consider carefully the deeply challenging socioeconomic situation of parents who facilitate the exploitation of their children. The Special Rapporteur believes that subjecting parents to criminal penalties would in many cases not be in the best interests of the child.

42. Besides closing the legal protection gap, the Government should address the social and economic root causes of *criadazgo*. Extreme poverty and a lack of economic alternatives for parents reportedly often influence their decision to allow their children to face potential exploitation. The Government should take steps to further social development assistance, such as by expanding the resources and coverage of the Abrazo and Tekoporã programmes, to protect vulnerable families. Government efforts to address decent work deficits should also include measures that target poor rural areas where families with children at risk of *criadazgo* reside. This would also require providing for access to schooling in areas in the Chaco.

43. During her visit, the Special Rapporteur received reports according to which some people continued to believe that *criadazgo* was a socially and culturally acceptable phenomenon that improved the life chances of children. At the same time, however, there is increasing awareness of the vulnerability to exploitation and slavery that it leads to, and its links to human trafficking. The Special Rapporteur therefore recommends that the Government continue and expand awareness-raising and sensitization campaigns in order to change harmful social and cultural attitudes that contribute to the continuation of *criadazgo*, and raise awareness of children's fundamental rights as laid out in the Convention on the Rights of the Child.

D. Other contemporary forms of slavery and slavery-like practices affecting children, including the worst forms of child labour

44. *Criadazgo* is not the only form of contemporary slavery involving children about which the Special Rapporteur received reports during her mission. Children are apparently

also vulnerable to other situations of slavery and slavery-like practices, including the worst forms of child labour. According to the reports, some children are forced to beg in the streets — which the Special Rapporteur herself witnessed — to earn money for their families. ILO defines forced begging as one of the worst forms of child labour, and is, in the view of the Special Rapporteur, a slavery-like practice. Above and beyond the exploitation that these children face, forced begging can lead to many violations of their rights. The time spent on the streets effectively deprives children of their basic right to education, and can expose them to the risk of violence, abuse and other forms of exploitation, including sexual exploitation. Stakeholders reported that, unlike in the past, when children were forced to beg by criminal syndicates, a phenomenon countered in recent years by successful government initiatives, today it is the family members of children who tend to force them to beg. While welcoming this change, the Special Rapporteur remains concerned about the situation of children exposed to exploitation as a result of the poverty of their families, and at reports that funding for preventative programmes might be cut by the Government. She therefore encourages the Government to address the root causes of begging and to sensitize families and the general public about the rights of children to be free from such forms of exploitation. She recognizes the role that social assistance programmes and the helpline for reporting child exploitation and abuse play, and encourages the Government to expand funding and coverage of such programmes.

45. The Special Rapporteur is also concerned at reports that children are subjected to child labour, including the worst forms of child labour, in a number of sectors in Paraguay despite the prohibition on child labour in national law and the fact that the State is a party to core ILO conventions on child labour. Official data showed that 37 per cent of the population is under 18,[10] and that 22 per cent of them work; 95 per cent of those who work are engaged in the worst forms of child labour.[11] These figures include the more than 46,900 children engaged in domestic servitude. Other sectors using child labour are agriculture (such as in sugar cane harvesting and cotton production) and cattle-raising (see para. 23 above).

46. The Special Rapporteur was informed during her discussions with government representatives and business associations of the many commendable initiatives taken to combat child labour in Paraguay, such as the inspection and auditing of sectors that traditionally relied on child labour, cooperation with other States in the region (such as El Salvador), the adoption of best practices for eliminating child labour, and corporate social responsibility initiatives to promote awareness of children's rights. The Special Rapporteur remains, however, concerned about the possibility of less conspicuous cases of child labour persisting in certain sectors and areas, and also at reports that, while direct employment of children has been reduced, some still accompany their parents to work owing to a lack of access to education or childcare.

47. The Special Rapporteur reminds the Government of Paraguay and other stakeholders, including private sector actors, of their obligations under international standards and the Sustainable Development Goals to take every measure necessary to eliminate all forms of child labour, and urges them to provide assistance in addressing its root causes, including poverty, lack of access to decent work, and inequality. The mandate holder noted the efforts made by the Government to more fully define and criminalize child labour in draft legislation, which should be adopted. Laws of this type would play an effective role in facilitating the detection and prosecution of contemporary forms of slavery involving children and in raising awareness among key stakeholders of their obligations under the conventions on slavery, ILO conventions and international human rights standards with regard to the rights of children at risk of exploitation.

[10] La Infancia Cuenta: Paraguay 2015, Sistema de indicadores en niñez y adolescencia, Coordinadora por los Derechos de la Infancia y la Adolescencia (CDIA), 2015, p. 50.

[11] See Magnitud y características del trabajo infantil y adolescente en el Paraguay (footnote 2), pp. 45–48.

E. Forced and bonded labour

48. During her visit, the Special Rapporteur received reports of many cases of forced and bonded labour in the Chaco, including during her visit to the region. Chaco, a vast, geographically isolated area, covers 60 per cent of all Paraguayan territory. According to the information received, only 3.3 per cent of the population live in the region, as many families were historically displaced as a result of loss of land, or chose to migrate to urban areas to seek greater economic opportunity. The displacement was also caused by the loss of employment and land as a result of large-scale privatization of land, much of which is used for commercial cattle farming. A mainly rural area, Chaco is the home of a number of different indigenous groups.[12]

49. The Special Rapporteur received multiple reports according to which indigenous peoples were vulnerable to exploitation, including practices that she would consider to be forced and bonded labour. The Ministry of Labour also informed the Special Rapporteur that it had received complaints of forced labour from inside the Chaco region. Vulnerability to such exploitation is reportedly rooted in the historical sale of indigenous land to large landowners, agribusiness and forestry companies without the free, prior and informed consent of indigenous peoples. While in some cases this reportedly caused displacement towards urban centres, many indigenous peoples chose to remain in the Chaco and became a source of labour for landowners, both local and foreign. The Special Rapporteur noted with concern reports that the State was largely absent from the Chaco, and that the budget of the National Institute for Indigenous Peoples is very limited. The result is that there is little oversight over business operations, such as by the labour inspectorate, but also that business owners often play a quasi-State role. When the Special Rapporteur visited the Chaco, she noted that businesses often provided power and other infrastructural services. While acknowledging the positive impact that such services can have on the lives of local peoples, she remains concerned that it creates an imbalance in the relationship between indigenous peoples, the State and business enterprises. Such an imbalance, combined with other factors, such as a lack of awareness of indigenous rights, a lack of unionization within the region, the inability to speak Spanish in some cases, the geographical isolation of many labour sites and high levels of illiteracy, can lead to severe vulnerability to exploitation, including forced and bonded labour.

50. While visiting the Chaco, the Special Rapporteur did not have the impression that such vulnerability was leading to many cases of forced and bonded labour in the majority of employers. She received reports of cooperatives and ranches that generally complied with national law, and of recent improvements in the degree of compliance in the region. Experiences often of course differ between different individuals and communities. The Special Rapporteur nonetheless remains concerned at cases of forced and bonded labour in smaller employment sites and in more remote, less accessible ranches, and at labour practices that she views as exploitative. According to information received by the Special Rapporteur, workers in the Chaco reportedly worked long hours without breaks or overtime, and received all or most of their wages in vouchers or credits that can only be spent at shops owned by the employers. Given the geographical remoteness of many labour sites and the fact that the credits can only be used in shops owned by their employers, the shops effectively have a monopoly, and charge inflated rates for basic subsistence items. Interlocutors pointed out how the cost of products from the Chaco, such as beef, can be less expensive in Asunción because of the above-mentioned monopoly, and how in many cases the vouchers were even insufficient to cover the basic needs of workers and their families, in which some employers reportedly give credit, which leaves workers vulnerable to situations akin to bonded labour.

51. Despite the initiatives that different government entities have taken to tackle forced labour, the State should do more to protect indigenous peoples living in the Chaco from exploitation. Cases of forced and bonded labour must be identified and prosecuted, and victims must be given access to justice, and the rehabilitation and reintegration necessary to

[12] See Mike Kaye, Formas contemporáneas de esclavitud en Paraguay, Anti-Slavery International, 2006.

them. Expanding the coverage of the labour inspectorate and ensuring that inspectors are trained to address the specific situation of indigenous peoples in the Chaco would be an important step.

52. The Government of Paraguay should also examine more broadly the situation of workers in the Chaco and the labour practices of employers. The Special Rapporteur is also concerned at the broader pattern of corporate capture of parts of the Chaco, whereby large companies have a monopoly over goods and services, play a key role in political and policy processes and fill the gaps created by the absence of the State, leaving indigenous peoples subject to the labour practices imposed, even when they are highly exploitative. Such practices have deep historical roots in the subjugation of indigenous peoples' rights to land, and the principle of free, prior and informed consent. The Special Rapporteur is particularly concerned at the practice of paying workers in credits, and at the conditions tying the use of credits to shops owned by employers. She therefore urges the Government to review such practices against national and international labour standards, and to ensure more oversight and accountability of businesses in the region. The Special Rapporteur also reminds all businesses operating in Paraguay, including in the Chaco, of their obligations under the Guiding Principles on Business and Human Rights.

53. With regard to forced labour, the Special Rapporteur was encouraged by reports that the Government is considering ratification of the Protocol to the Forced Labour Convention, 1930 (No. 29), and urges the Government to do so.

F. Domestic servitude

54. The Special Rapporteur is concerned about the situation of domestic workers, the majority of whom are women, in Paraguay. Given that the use of domestic workers appears to be common in the country, the shortcomings in the legal and institutional framework could put workers at risk of domestic servitude. The Special Rapporteur indeed received reports of cases of domestic workers in a situation of servitude, involving severe restrictions on their freedom of movement, remuneration that is significantly below the minimum wage, and cases of abuse and violence.

55. With regard to the legal framework, article 10 of law No. 5.407 on domestic work (see para. 10 above), according to reports received by the Special Rapporteur, sets the minimum wage for domestic workers at no less than 60 per cent of the standard minimum wage for non-domestic workers. Although the law is an improvement on previous legal provisions (which set the minimum wage at 40 per cent of that earned by non-domestic work) and includes provisions for facilitating access to social security, the payment of a wage that is lower than the level deemed acceptable for the general category of workers increases the vulnerability of domestic workers to contemporary forms of slavery.

56. The Special Rapporteur is concerned that law No. 5.407 does not specify that the wage of domestic workers must be paid in cash only, providing for payment to be made with a combination of cash and in kind, such as food and accommodation (art. 12) (in accordance with the provisions of article 231 of the Labour Code, which allows up to 30 per cent of wages to be paid in kind). In the view of the Special Rapporteur, the entire amount of the minimum wage should be paid in cash. Payment in kind is not an appropriate form of payment for any kind of work, given its potential negative impact on a worker's right to change employment. The Special Rapporteur therefore recommends that the Government amend law No. 5.407 and the Labour Code to ensure that 100 per cent of the minimum wage is paid to domestic workers in cash.

57. The Special Rapporteur was also informed of weaknesses in the institutional framework; the labour inspectorate indeed does not have the capacity or the resources to effectively fulfil its mandate. While recognizing the challenges involved in the regulation of private households, the Special Rapporteur encourages the Government to consider ways to increase oversight and accountability of those employing domestic workers. She notes the availability of a complaints system and commends the Government of Paraguay on it, but also encourages it to take into consideration the feasibility of other regulatory options, particularly in the light of the challenges that domestic workers may face when lodging a

complaint, such as restrictions of their freedom of movement, fear of reprisal and/or a lack of economic alternatives to their current situation, which may act as a deterrent.

G. Challenges to access to justice

58. Access to justice and remedy is a fundamental element of slavery eradication efforts (see A/HRC/36/43). It not only supports law enforcement but also the rehabilitation and reintegration of victims, and provides disincentives for the perpetration of related human rights violations.

59. During her visit to Paraguay, the Special Rapporteur received information about a number of barriers to access to justice for victims of contemporary forms of slavery: the absence of a clear legal definition of or criminal sanctions for a number of contemporary forms of slavery; the limited geographical reach of law enforcement and judicial entities in isolated and rural areas; the reluctance of some law enforcement agencies to investigate crimes; fear of retaliation or job loss if abuses are reported; lack of awareness in victims of their rights; and the often hidden nature of violations. She also received information about a lack of rehabilitation and reintegration support for victims, including child victims. Although exact figures were not available due to issues with the legal definition of practices falling under the category of contemporary forms of slavery, the Special Rapporteur was informed that the prosecution rate was very low.

60. The Special Rapporteur encourages the Government of Paraguay to take concrete steps to remove the above-mentioned obstacles to access to justice and to uphold fully its obligations under international law.

V. Conclusions and recommendations

A. Conclusions

61. **The Government of Paraguay is taking concrete steps to tackle contemporary forms of slavery and seems to have the political will to end exploitation in the country. The Special Rapporteur took note of a number of positive developments, including the development of a comprehensive institutional and policy framework, changes in social attitudes towards exploitation, including exploitation involving children, improved compliance with labour standards, a drop in exploitation, particularly child labour, and efforts to implement the Sustainable Development Goals, including target 8.7.**

62. **The Special Rapporteur commends the Government for the progress made, but remains concerned at gaps in protection, particularly with regard to groups in a situation of vulnerability, such as indigenous peoples, children from poor or rural households, and female domestic workers. She is also concerned that the prevailing economic and development strategies of seeking foreign investment potentially at the expense of labour market protections could create conditions that lead to a shortage of decent work, inequality, and severe exploitation, including contemporary forms of slavery.**

63. **The Special Rapporteur strongly encourages the Government of Paraguay to take steps to ensure that both the systemic factors that enable exploitation are addressed and that protections against all forms of contemporary forms are extended to all in Paraguay. She urges the Government to pay particular attention to the vulnerability of children, women and minority groups, including indigenous peoples living in the Chaco, and to close any protection gaps in relation to their human and labour rights. The Special Rapporteur remains at the disposal of the Government to provide any support in the full and effective implementation of her recommendations, and encourages the international community to provide its support.**

B. Recommendations

1. Government of Paraguay

(a) Legal and institutional framework

64. **The Special Rapporteur recommends that the Government of Paraguay:**

(i) Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;

(ii) Ratify the Protocol to Forced Labour Convention, 1930 (No. 29);

(iii) Ratify the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;

(iv) Ensure that all contemporary forms of slavery, including all types of forced or bonded labour, are criminalized as standalone offences in national law, in accordance with the State's obligations under international law;

(v) Conduct an analysis of the labour market to identify the prevalence of forced labour and bonded labour, and of child labour and its worst forms in order to ensure that current institutional provisions are suited to the needs of victims and provide adequate protection to those vulnerable to contemporary forms of slavery;

(vi) Strengthen the mandate and capacity of the national human rights institution.

(b) Cross-cutting issues

65. **The Special Rapporteur recommends that the Government of Paraguay:**

(i) Commission a survey into the prevalence of all contemporary forms of slavery, including an analysis of the frequency of different types of exploitation, the sectors in which slavery-like practices commonly develop, the groups most affected and the risk factors that make individuals vulnerable;

(ii) Ensure that the findings of the above-mentioned research and analysis are disseminated to all stakeholders, including government officials, communities and civil society stakeholders;

(iii) Develop sensitization and awareness-raising activities for government officials, communities and civil society stakeholders about obligations under the conventions on slavery and other relevant international legal standards.

(c) Protecting children from contemporary forms of slavery, including *criadazgo*

66. **The Special Rapporteur recommends that the Government of Paraguay:**

(i) Accelerate efforts to ensure that *criadazgo* is fully defined within the national legal framework, with penalties for its practice;

(ii) Ensure that all efforts to criminalize *criadazgo* incorporate fully the principle of the best interests of the child, and avoid any unnecessary criminalization of parents; penalties established within such legal provisions should focus on those who seek to profit from the poverty of vulnerable families and children;

(iii) Besides closing the legal protection gap relating to *criadazgo*, invest resources in understanding and addressing its socioeconomic root causes;

(iv) Conduct sensitization and awareness-raising activities in order to continue progress in changing social and cultural attitudes that enable the continuation of contemporary forms of slavery, including *criadazgo*, the worst forms of child labour, forced begging, forced labour, bonded labour and domestic servitude;

(v) **Increase the resources available to and the reach of social development programmes, such as Abrazo and Tekoporã, which target the root causes of contemporary forms of slavery;**

(vi) **Ensure that helpline services for children and/or concerned individuals are available in all geographical areas of Paraguay;**

(vii) **Implement social and human rights programmes providing care for and support to child victims of contemporary forms of slavery, including children in a situation of *criadazgo*;**

(viii) **Pay special attention to the coverage of programmes designed to prevent and combat child labour, ensuring that initiatives that have been successful in reducing child labour are fully extended to rural areas and the most vulnerable families;**

(ix) **Ensure adequate resources for child protection services and the implementation of child-friendly budgeting in all government entities;**

(x) **Continue efforts made by the National Commission for the Elimination of Child Labour (CONAETI) to protect children and young persons and to reduce their vulnerability to contemporary forms of slavery, including children working in a situation of *criadazgo*, forced begging, or other slavery and slavery-like practices reported in different economic sectors, such as agriculture;**

(xi) **Ensure that the Code on Children and Adolescents is effectively applied to protect the best interests of children and adolescents, and to protect them in particular from the risks of entrapment in contemporary forms of slavery, such as *criadazgo* and forced begging.**

(d) Tackling decent work deficits

67. **The Special Rapporteur recommends that the Government of Paraguay:**

(i) **Place full and productive employment and decent work at the centre of all growth and development strategies;**

(ii) **Give special consideration to identifying ways to make decent work opportunities available to women and young people;**

(iii) **Consider ways to increase the minimum wage in Paraguay to ensure the availability of more decent work opportunities;**

(iv) **Consider ways to formalize the economy further and thereby reduce the vulnerability of individuals working in the informal sector.**

(e) Domestic servitude

68. **The Special Rapporteur recommends that the Government of Paraguay:**

(i) **Ensure that domestic workers are paid 100 per cent of the standard minimum wage, and that employers are prohibited from paying them in kind, such as with accommodation or food;**

(ii) **Consider ways to ensure oversight of employers using domestic workers to ensure that relevant protections are consistently applied;**

(iii) **Take steps to ensure the identification and prosecution of all cases of violence and abuse against domestic workers.**

(f) Forced and bonded labour in the Chaco

69. **The Special Rapporteur recommends that the Government of Paraguay:**

(i) **Prohibit the payment of workers in kind or with vouchers, and ensure that all workers are paid at least the standard minimum wage in cash;**

(ii) **Develop community-based programmes in the Chaco to sensitize communities vulnerable to forced labour about their rights under Paraguayan law;**

(iii) **Increase the capacity and geographical reach of the labour inspectorate, including by ensuring oversight of domestic servitude and labour sites, including all ranches, in the Chaco;**

(iv) **Examine the overall relationship between the State, indigenous peoples and business enterprises in the Chaco, ensuring that the Government takes full responsibility for the promotion and protection of indigenous peoples' rights and takes appropriate action against exploitation, monopolies and corporate capture.**

(g) Access to justice

70. **The Special Rapporteur recommends that the Government of Paraguay:**

(i) **Take steps to ensure that all contemporary forms of slavery are clearly defined in national law and are liable to criminal sanctions that are effectively enforced;**

(ii) **Ensure that law enforcement officials are aware of their responsibility to undertake outreach work targeting persons subjected to contemporary forms of slavery, taking into consideration the fact that victims may be unable to seek assistance, might not trust the authorities or may fear the consequences of making a complaint;**

(iii) **Ensure that all authorities involved in the realization of the rights of victims of contemporary forms of slavery, including border management authorities, the police, public prosecutors, the labour inspectorate and the judiciary, are adequately trained in the identification of victims;**

(iv) **Provide labour inspectors with a mandate and the tools necessary to them to identify victims of contemporary forms of slavery proactively, and to facilitate their rescue and access to justice, including in the Chaco;**

(v) **Train police, prosecutors and judicial authorities in the handling of victims of contemporary forms of slavery, in particular on how to create a safe, supportive and child- and gender-sensitive environment for victims to ensure that they have access to justice;**

(vi) **Organize training and sensitization activities with at-risk communities, groups and individuals in order to ensure that they are aware of their human and labour rights and of channels that can be used to report abuse, violence and exploitation;**

(vii) **Ensure adequate services to ensure the rehabilitation and reintegration of victims of contemporary forms of slavery, including child victims, following their release from situations of extreme exploitation.**

2. Other stakeholders

71. **The United Nations country team should ensure that implementation of target 8.7 of the Sustainable Development Goals, on taking immediate and effective measures to eradicate forced labour, ending modern slavery and human trafficking and securing the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 ending child labour in all its forms, is integrated into efforts to implement the Goals as a core part of the 2030 Agenda for Sustainable Development.**

72. **Private sector actors should ensure compliance with human rights in all business activities, in accordance with the Guiding Principles on Business and Human Rights.**

73. Private sector actors should respect rights at work, including by collaborating with ILO decent work creation projects and by supporting opportunities for increasing the formalization of work.

74. The international community should continue and expand the technical and financial resources provided to the Government of Paraguay in order to support its efforts to strengthen the State's response to exploitation, lack of decent work, inequality and social exclusion.

75. Non-governmental organizations and other civil society actors should continue and expand upon programmes that tackle contemporary forms of slavery, its causes and consequences.

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Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the thematic report of the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, Fabián Salvioli, pursuant to Human Rights Council resolution 27/3.

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Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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I. Introduction

1. In the present report, submitted to the Human Rights Council pursuant to its resolution 36/7, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, lists the key activities undertaken by the previous mandate holder from August 2017 to April 2018, and his own activities conducted in May and June 2018, and gives an overview of his approach to the mandate and a preliminary outline of areas of interest.

II. Activities of the previous mandate holder

2. The Special Rapporteur visited Sri Lanka from 10 to 23 October 2017 (see A/HRC/39/53/Add.1).

3. In September 2017, the Special Rapporteur participated in the thirty-sixth session of the Human Rights Council, presenting a thematic report on transitional justice in weakly institutionalized post-conflict settings (A/HRC/36/50) and a global study on transitional justice (A/HRC/36/50/Add.1).

4. On 19 and 20 September 2017, the Special Rapporteur, together with the Special Adviser of the Secretary-General on the Prevention of Genocide, held a first expert group meeting with a view to preparing their joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, particularly to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence, pursuant to Human Rights Council resolution 33/19 (A/HRC/37/65), exploring the relationship between transitional justice and atrocity prevention, bringing together representatives of Member States, United Nations agencies, funds and programmes, special procedure mandate holders, civil society organizations and the academic community. At the meeting, participants focused on how education and constitutional reform could contribute to atrocity prevention.

5. From 25 to 27 October 2017, the Special Rapporteur presented his report on a comprehensive framework approach to prevention (A/72/523) to the General Assembly.

6. On 13 and 14 November 2017, a second expert group meeting was organized by the mandate holder together with the Special Adviser. At the meeting, participants emphasized the potential contributions of security sector reform and the strengthening of civil society to atrocity prevention.

7. From 14 to 17 November 2017, the Special Rapporteur participated in an event relating to the Truth, Justice and Remembrance project undertaken by the Robert Bosch Foundation, in Berlin.

8. From 30 November to 3 December 2017, the Special Rapporteur participated in an event organized by the Max Planck Foundation for International Peace and the Rule of Law, in Bogotá.

9. On 2 March 2017, the Special Rapporteur, together with the Special Adviser of the Secretary-General on the Prevention of Genocide, presented to the Human Rights Council their joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law (see para. 4 above).

10. On 5 March 2017, a high-level side event at the thirty-fourth session of the Human Rights Council was held to launch the aforementioned joint study with the participation of the Special Rapporteur and the Special Adviser of the Secretary-General on the Prevention of Genocide, moderated by Tim Sebastian, with the participation of the Special Envoy of the African Union on Women, Peace and Security, Bineta Diop; the Regional Director for Asia Pacific at the Open Society Foundation, Binaifer Nowrojee; Marko Milanovic from the University of Nottingham; and Rama Mani from the University of Oxford.

11. Also on 5 May, the Special Rapporteur participated as a panellist in a side event on the theme "Transitional justice in Sri Lanka: will it deliver for the victims of enforced disappearances?".

12. On 21 March 2018, the Special Rapporteur took the floor in the context of the oral briefings to the Human Rights Council by the United Nations High Commissioner for Human Rights on Sri Lanka under agenda item 2. Beforehand, he held a meeting with the Minister of Foreign Affairs of Sri Lanka.

13. On 22 March 2018, the Geneva Peacebuilding Platform organized a public discussion with the Special Rapporteur on the contribution of transitional justice to the prevention of mass atrocities, held in Geneva.

III. Activities of the Special Rapporteur

14. The new mandate holder assumed his functions on 1 May 2017, and has since engaged in and held discussions with a number of Governments, civil society organizations, representatives of victims and other stakeholders.

15. The Special Rapporteur renewed requests to visit Côte d'Ivoire, Guatemala and Nepal. Requests to visit Brazil, Cambodia, the Democratic Republic of the Congo, Guinea, Indonesia, Japan, Kenya and Rwanda are still pending.

16. The Special Rapporteur attended the annual meeting of special procedure mandate holders held from 4 to 8 June 2018 in Geneva. In the same week, he met with the ambassadors of Guatemala, Nepal, Spain, Switzerland and Tunisia. On 4 June, he participated in the launch of the *United Nations Principles to Combat Impunity: A Commentary*, organized by the Geneva Academy of International Humanitarian Law and Human Rights.

17. From 8 to 10 May, the Special Rapporteur participated in a conference on the theme "Reparations: fifteenth anniversary of the National Compensations Programme" and the "Public forum on Genocide", organized by Impunity Watch, in Guatemala City.

18. From 19 to 21 June, the Special Rapporteur gave an introductory statement for a panel discussion on the theme "Transitional justice and the fight to end impunity", held during an Annual Rule of Law Meeting of the United Nations Development Programme (UNDP), on the theme "Strengthening the rule of law and human rights for sustaining peace and fostering development," in New York. During that period, he also met with representatives of several civil society organizations.

IV. Approach of the Special Rapporteur

19. The Special Rapporteur pays tribute to the work of the previous mandate holder, Pablo de Greiff, and will build upon his call for a comprehensive approach to transitional justice, anchored in standards for the redress of gross violations of human rights and serious violations of international humanitarian law, and the prevention thereof.

20. In the section below, the Special Rapporteur outlines a number of aspects he deems crucial in the implementation of his mandate.

21. On the basis of the foundational work of the previous mandate holder both in relation to the elements of the mandate — truth, justice, reparation and guarantees of non-recurrence — and the linkages of work on transitional justice with other policy interventions, in particular development, and peace and security, the Special Rapporteur intends to develop the mandate further, to respond to the challenges currently faced in the field of transitional justice and in spheres that are interconnected but that rarely coordinate with work on transitional justice.

22. The Special Rapporteur will continue to carry the mandate forward through the open dialogue previously established with all relevant actors: Member States and their relevant institutions, international and regional organizations, the treaty bodies and the special

procedures of the Human Rights Council, national human rights institutions, civil society organizations, representatives of victims, other practitioners and academic entities.

23. Human rights and the State obligations that stem from them are dynamic and progressive. The Special Rapporteur will identify in a continuous manner updated aspects of each of the four elements of the mandate, including new jurisprudence from relevant international, regional or domestic entities, and good practices that he deems important to share.

24. The content of the right to the truth and of what is expected from the proper functioning of truth commissions, the parameters of justice and the scope of measures of reparation and guarantees of non-recurrence cannot be devised in exactly the same way today as they were understood when the first transitional justice processes were implemented.

25. Much of this progress made has been the result of the work done by international and regional human rights monitoring bodies, and by related advocacy efforts of civil society actors. In order to comply with the above-mentioned objective, the Special Rapporteur will reflect and draw on the analysis of transitional justice processes carried out by the relevant bodies of the United Nations and regional organizations. Naturally, the development of the mandate must be in harmony with the human rights system of which it is part, ensuring cross-fertilization and the prioritization of a "pro persona" perspective as hermeneutical method. On this basis, the Special Rapporteur is keen to keep stakeholders up to date on the most recent developments.

26. Transitional justice situations are diverse and do not have the same origin; some processes derive from situations of armed conflict, others from authoritarian regimes, or a combination of them. There may also be other forms of violence, or specific and particular situations in a State that give rise to the application of measures of transitional justice, which do not precisely fit in the above-mentioned categories.

27. The Special Rapporteur therefore deems it important to assess whether different situations can, or indeed must, give rise to different solutions under the broad spectrum of transitional justice measures, and how they can have an impact on each of the pillars of the mandate and its comprehensive approach.

28. For example, in situations of post-conflict transitional justice, it will be essential to address, through an array of public policy measures, the structural causes that gave rise to or allowed the conflict. Such causes are often linked to situations of extreme poverty, diverse forms of discrimination or denial of individual or collective rights. This constitutes an area of interest for the future substantive work of the mandate; in particular, exploring how to undertake transitional justice processes that do not continue to foster or deepen stigmatization and discrimination.

29. In this vein, the Special Rapporteur also undertakes to work with Member States initiating or undertaking transitional justice processes, by means of an interactive and open dialogue and in the spirit of full cooperation, to technically advise and assist them to carry out such processes in compliance with international human rights law, in the design and consolidation of peace and security, centred on a "pro persona" perspective and aimed at building and strengthening robust and sustainable societies based on the rule of law.

V. Preliminary outline of areas of interest to the Special Rapporteur

30. Beyond the commitments regarding the discharge of the mandate made in the section above, the Special Rapporteur would like to highlight key areas of interest that he deems priorities as he takes on the mandate and that he intends to develop and assess throughout his mandate. These areas relate to a broad array of issues, such as those at the core of the transitional justice field and cross-cutting questions, but also adjacent areas where similar challenges are posed.

A. Fight against impunity and the establishment of trust as overarching objectives

31. At the outset, the Special Rapporteur will follow up on the study of two overarching issues that are integral components of transitional justice processes: the fight against impunity and re-establishment of civic trust. One of the problems that most affect victims of repression and/or conflict and that usually produces re-victimization is the impunity of those who have perpetrated or masterminded massive or systematic violations of human rights or international humanitarian law. Justice systems are often weak or non-operational in the aftermath of mass violations, which obstructs any chance of accountability or the realization of the right to justice for past abuses. Efforts should be made to increase the effectiveness of justice procedures. The Special Rapporteur is aware that the concept of justice, however, should be understood as being broader than mere criminal justice, although naturally it must include it.

32. Impunity also arises from the failure of States to provide victims with effective remedies and reparation, to ensure the right to know the truth about violations endured, and to adopt measures to prevent the recurrence of violations. In underscoring the need for a comprehensive approach to fighting impunity, where each component plays a necessary role in restoring accountability, the Special Rapporteur will examine the normative framework and the different models and mechanisms possible to combat impunity in order to identify good practices and lessons learned from the experience of different States.

33. Part of this comprehensive approach also necessarily entails the central role and broad participation of victims and other citizens, in particular women and minorities, in the design and implementation of programmes for fighting impunity. In all transitional contexts, civil society, including victims' organizations, have played a crucial role in the fight against impunity. The mandate holder will consider existing practices and assess the extent to which their positive and necessary role has been ensured and facilitated by the State.

34. Fighting impunity and ensuring that violations are acknowledged and addressed by State institutions provides a measure of recognition to victims and helps to establish trust among members of society. The role of trust-building in transitional justice processes will also be a continuing focus of the work of the mandate holder.

35. Conflict and the rule of authoritarian regimes often lead to the disintegration of social trust both vertically, between the State and its people, and horizontally, between individuals and communities. This phenomenon creates a negative feedback loop and becomes both a condition and a consequence of the continuation of violence, as described by the previous mandate holder. The measures underpinning the four elements of the mandate seek to contribute to vertical and horizontal trust-building. The Human Rights Council, in its resolution 18/7, in which it created the mandate, stressed its expectation that the comprehensive implementation of the four measures would contribute to the restoration of confidence in the institutions of the State and promote the rule of law.

36. Trust should not be understood as mere normative or procedural predictability. Instead, trusting an institution amounts to assuming that its constitutive rules, values and norms are shared by its members or participants and are regarded by them as binding (A/68/345, para. 39). Trust, therefore, rests on the expectation of commitment by all actors to action on the basis of shared norms.

37. On the conceptual basis described above, the Special Rapporteur will explore practical experiences and good practices in re-stablishing trust in State institutions, with emphasis in such areas as the vetting of judicial or security institutions and the interlinkages of the forward-looking trust element, with symbolic and material reparation measures for victims and apologies from State institutions.

B. National and regional experiences and practices regarding the four elements of the mandate

38. On the basis of the foundational work of the previous mandate holder with regard to the four elements of the mandate, the Special Rapporteur intends to increase possibilities for the sharing of experiences and practices at the domestic or regional levels in relation to transitional justice measures, with a human rights-based approach. The sharing of experience in different initiatives, including regional approaches, will allow States in transition to have an overview of possible and already tested options, and therefore be better equipped to adapt those options to the particular situation at hand.

39. The Special Rapporteur will address this objective in his report on practical experiences in reparations, which he will submit to the Human Rights Council in 2019.

C. Further development of the area of guarantees of non-recurrence

40. As outlined in the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), guarantees of non-recurrence are an integral part of reparation and redress for victims.

41. When the Human Rights Council established the mandate in its resolution 18/7, it its emphasized the adoption of guarantees of non-recurrence within, or of, the entities that had themselves committed gross violations of human rights and serious violations of international humanitarian law. It also made specific reference to institutional reform and the vetting of public employees and officials.

1. A proactive approach to non-recurrence

42. Since the adoption of the set of principles for the protection and promotion of human rights through action to combat impunity, the transitional justice debate has gradually moved away from the concept of "guarantees of non-recurrence" as covering solely institutional reforms and vetting. In several reports submitted by the previous mandate holder to the Human Rights Council and the General Assembly, he suggested that the concept of guarantees of non-recurrence should be viewed on three different levels: on that of official State institutions, of civil society, and of the spheres of culture and personal dispositions (see A/HRC/30/42, A/72/523 and A/HRC/37/65).

43. Building on the call made by the previous mandate holder for a broad preventive framework, the Special Rapporteur intends to move away from a "reactive" approach, is centred on institutions, towards a more "proactive" one that encompasses fields and areas that go well beyond the institutions that had committed the violations in the first pl.ce.

44. This is reflective of the fact that, in many contexts, the United Nations and regional and bilateral actors have come to realize that transitional justice and preventive initiatives centred on institutions, as important as they might be, have hardly ever reached the level of the broader society, let alone the grass-roots level. Such an institutions-heavy focus has the potential to exclude parts of society that are crucial to efforts to re-establish trust, including at the local community level.

45. It is in this connection that the Special Rapporteur intends to focus his attention on these broader fields that bear a preventive potential, in particular the field of formal and informal education.

2. Enhancing the focus on the field of cultural and individual dispositions: education, arts and culture

46. Education plays an important role in society by transmitting established knowledge and shared culture. In situations of transition from conflict or authoritarian regimes, education can contribute to social cohesion and peace by facilitating the transmission of memory about past events, engaging society — especially the younger generations — in a dialogue about those events, and promoting a culture of human rights and democracy.

47. In past reports, the Special Rapporteur has noted the potential of education and the teaching of history as powerful tools in the prevention of the recurrence of violations. In those reports, the mandate holder has noted that, because of its formative potential, education can contribute to shaping new norms, mediating between contending narratives of the past, and nurturing a culture of dialogue and democratic citizenship across generations (A/HRC/30/42, para. 93). When not aligned with the aims of transitional justice, however, education policies and methods can fuel resentment, deepen inequalities and foment intolerant attitudes. Given the pivotal role of education in societal development, it is unlikely that any prevention strategy will be successful without long-term changes in education (A/72/523, para. 78).

48. The importance of including objective and multi-faceted history education in national curricula was also highlighted in the joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law (see A/HRC/37/65). Successful history education is not only about producing reliable textbooks but also about facilitating a productive reflection on past events and human behaviour, which can in turn contribute to reconciliation processes (A/HRC/37/65, paras. 75, 79, 80 and 98).

49. Arts and other cultural interventions, including memorialization, are also important means of generating empathy and solidarity, and strengthening sustainable processes of social integration. Similarly, the preservation of and access to archives are an educational tool that can help to fight denial and revisionism, important for history education and institutional reform. Together with education, these polices can contribute to nurturing cultures and individuals that can sustain prevention aims over time (A/72/523, paras. 79–80).

50. The Special Rapporteur in the field of cultural rights presented two studies on historical and memorial narratives in divided and post-conflict societies, for which she worked in close collaboration with the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence (see A/68/296, paras. 86). Actions in the cultural sphere can help to achieve transitional justice by focusing on the promotion of cultural interaction and understanding, exchanging perspectives about the past and designing a cultural landscape reflective of cultural diversity (A/HRC/25/49, para. 47–48). She recommended that history teaching and memorialization processes should adopt a multi-perspective approach aimed at promoting civic engagement, critical thinking and debate about representations of the past and present challenges.

51. It is in this connection that the current Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence intends to examine national (and possibly regional) experiences and substantive debates concerning the role of education and history teaching in supporting transitional justice goals, and explore how these goals can help to identify educational deficits and inform education sector reform. It should be noted that educational reform and curricula development should not attempt to minimize either the responsibility of the State with regard to violations or the need to fulfil the rights to truth, justice and reparation for victims.

D. Gender perspective

52. As established by the mandate holder in his first report of to the Human Rights Council, a gender perspective has been consistently applied throughout the work of the mandate (A/HRC/21/46, paras. 58–59), whether with regard to thematic issues, such as challenges in truth commissions (A/HRC/24/42, para. 36), prosecutorial strategies (A/HRC/27/56, paras. 36 (e), 57 (c) and 86), reparations (A/69/518, paras. 68–73) or guarantees of non-recurrence (A/HRC/30/42, para. 63), or to the context of country visits.

53. The issues addressed to date by the mandate holder during country visits include the identification of the gender-related dimension of violations and abuses committed during the respective period of conflict and/or repression; the insufficient involvement and heeding of women during national consultations on transitional justice policies; the insufficient representation of women in truth commissions, alongside the need for gender-specific

training for all commissioners and other members of transitional justice mechanisms in the design and implementation of a gender-sensitive strategy; the challenges of ensuring that reparation schemes are gender-sensitive; and the need to ensure women's access to land in the context of reparations and land reform.

54. Most debates in the field of transitional justice with regard to gender remain focused on women as victims of sexual violence. Another recurrent key aspect analysed in theory and practice pertains to reparations and their potential transformative nature (A/69/518, paras. 72).[1] The Special Rapporteur intends to identify, analyse and share practical experiences of reparations with a built-in gender perspective, in consultation with stakeholders, in a thematic report in the coming year (see also paras. 39–40 above).

55. In addition, the Special Rapporteur will, in a future thematic report, thoroughly examine and identify the multi-layered aspects of a gender perspective in the four elements of the mandate.

56. A number of pertinent issues relate to strengthening women's involvement and participation in the conceptualization, design and implementation of national transitional justice strategies and mechanisms. In many contexts, the important potential of women in these crucial processes remains largely unutilized, neglected or unrecognized. In this connection, the work of the Special Rapporteur will have to take into account the relevant political and social factors that constrain the inclusion of women. While in many situations women made a crucial contribution to local, community-based initiatives, they are rarely involved decision-making processes.

57. The processes surrounding peace agreements, which remain frequently in the hands of political and military (elite) male representatives, are a case in point. Moreover, despite their substantive contribution to bringing about political transformation, women frequently fail to gain from the reform policies adopted. The more inclusive character of more recent experiences nonetheless give some hope. It is therefore also important to shed more light on the preconditions that would create an enabling environment for women in their diversity, to allow them to take a more proactive role in these processes.

58. Another topic that should be elaborated in this context is how education — both formal and informal — and civic and political socialization can contribute to maintaining patriarchal "masculinities" that affect the shape and implementation of transitional justice processes.

E. Transitional justice and non-State actors

59. Like the protection and promotion of human rights, the field of transitional justice struggles with the fact that the current international legal framework remains centred on the State. While the Special Rapporteur notes some important developments in international law, including the Rome Statute of the International Criminal Court and soft law standards pertinent to some areas of transitional justice, he stresses that the legal framework has not yet adjusted to the factual power and control exercised by non-State actors. This has repercussions not only in terms of abuses committed by non-State actors against individuals and the question of their redress on an equal footing as for victims of human rights violations committed by the State, but also on how transitional justice measures should be designed and equipped to suit situations on the ground.

60. When dealing with non-State actors, the overwhelming majority of practitioners' work and academic writings is dedicated to conflict (and post-conflict) situations and the existence of armed opposition groups, paramilitary groups, terrorist groups, mercenaries, mafia-type organizations, urban gangs and other similar groups, and their various structures and operational modes. The impact of such non-State actors has not, however, been systematically analysed in the context of the question of the adequacy of transitional justice mechanisms, particularly in weakly institutionalized post-conflict situations, which have

[1] See also Guidance note of the Secretary-General, "Reparations for conflict-related sexual violence", available at www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf.

significantly different characteristics to situations in which transitional justice measures first originated (see A/HRC/36/50).

61. Beyond this specific type of non-State actor, the Special Rapporteur will dedicate his attention to the constructive role that other non-State actors can play in transitional settings, including for example (transnational) companies, religious or other faith-based actors, the media and artists. He believes that the productive potential of such actors has to date been understudied and therefore underutilized.

62. To illustrate, in a recent study conducted jointly by the mandate holder and the Special Adviser of the Secretary-General on the Prevention of Genocide, the role of religious leaders and actors in relation to the prevention of atrocity crimes was highlighted (A/HRC/37/65, paras. 81–83), with specific reference to the Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes.[2]

63. Because of the complexity relating to these different actors (transnational companies, religious and faith-based actors, the media and artists), such issues may merit the drafting of different types of thematic reports or the preparation of joint studies, together with one or several special procedures of the Human Rights Council.

F. Participation of victims and the question of ownership

64. On the basis of the reports of the previous mandate holder on the themes of the participation of victims in transitional justice measures, in which he studied the different types of participation in relation to the four elements of the mandate and described the conditions for success for such participation (A/HRC/34/62), and on national consultations concerning the design and implementation of transitional justice measures, in which he addressed preconditions for success of such national consultation, their operational challenges, and their contribution to the legitimacy of transitions (see A/71/567), the Special Rapporteur intends to address the question of the participation of victims and victim-centredness as a cross-cutting issue that will transcend both his thematic and country-related work.

65. Inclusion and participation are two elements that aim at ensuring that transitional justice measures respond and, indeed, redress the grievances of victims and affected communities. It is the Special Rapporteur's intention to work with relevant civil society organizations and victims' associations with a view to further identify factors that support the eventual beneficial effects of participation for both victims and society at large. In this connection, he also intends to consider more informal ways of participation — those that to date have been invisible and therefore unaccounted for.

66. Furthermore, the participation of victims is also likely to alter the dynamics with regard to the ownership of the origins of transitional justice and their implementation. The well-known and often proclaimed principle of "local ownership" deserves more detailed elaboration in this connection, as do its ramifications for transitional justice processes as they evolve. The Special Rapporteur intends to study the intersection of participation and ownership throughout his mandate, specifically by drawing on recent examples observed in different States, and related studies already conducted by practitioners.

G. Transitional justice and the Sustainable Development Goals

67. Justice has too often been traded off against short-term economic development and the requirements of "stability", with disregard for State obligations to provide accountability for gross human rights violations.[3] Consequently, the previous mandate

[2] See www.un.org/en/genocideprevention/documents/publications-and-resources/Plan%20of%20Action_Religious_Prevent-Incite-WEB-rev3.pdf.

[3] See also the statement made by the previous mandate holder to the Third Committee at the sixty-eighth session of the General Assembly on 25 October 2013, available from https://papersmart.unmeetings.org/media2/703424/statement-by-mr-pablo-de-greiff-item-69.pdf.

holder made the case for firmly anchoring justice and right-related concerns in the new post-2015 development agenda. In his report to the General Assembly (A/68/345), he explained that justice, security and development could not be promoted one at the expense of the other, and highlighted the development potential of measures underpinning the four elements of the mandate.

68. Gross human rights violations or serious violations of international humanitarian law affect not just direct victims but "spill over" to society as a whole, magnifying their negative impact.[4] Massive human rights violations leave in their wake conditions that hamper development, such as a weak sense of people as rights-bearers and deep social mistrust (see paras. 35–38 above).

69. Transitional justice and human development aim at building just, peaceful and inclusive societies, and therefore complement and mutually reinforce each other. Past development frameworks have hailed development success stories in countries otherwise affected by large-scale deficits in security, justice and rights. Experience has demonstrated, however, that narrow development efforts that exclude considerations pertaining to justice or rights fail to achieve sustainable human development.

70. The development discipline has progressed significantly since the days when development was considered to be merely a matter of economic growth to the current conceptualization of human development that also includes aspects relating to institutional design, good governance, peace and security, and also to broader indicators of well-being. The development sector now understands that, in transitional settings, transitional justice measures can help to construct societies based on the rule of law and that can foster human development. This shift had led to greater attention being paid to the nexus between the rule of law, rights and development. Development actors also increasingly engage to empower civil society to exercise its rights and to participate in policymaking. Furthermore, transitional justice and development actors increasingly work together to address the root causes of conflict and violence that often lie at the heart of economic and social exclusion, discrimination and inequality.[5]

71. While past development frameworks, including the Millennium Development Goals, have failed to track either existing legal obligations or popular aspirations relating to justice, the Sustainable Development Goals adopted in 2015 introduced in its Goal 16 a number of targets that are directly related to transitional justice aims; such as:

- Promoting the rule of law and ensuring equal access to justice
- Developing effective, accountable, and transparent institutions
- Reducing all forms of violence
- Reducing corruption and strengthening the recovery and return of stolen assets
- Ensuring responsive, inclusive and participatory decision-making at all levels
- Ensuring public access to information

72. Comprehensive transitional justice measures can also contribute to other Sustainable Development Goals, such as ensuring inclusive and equitable quality education (Goal 4), achieving gender equality and empowering all women and girls (Goal 5), and reducing inequality within and among countries. The nexus between education and transitional justice has been explored above. Addressing laws, practices and institutions that reproduce gender imbalances and violence is also a vital aspect of transitional processes. Because of the disproportionate impact of human rights abuses on women, it is important to ensure that development and transitional justice process have a transformational impact on women's lives. In addition, transitional justice processes can help to reduce inequality and

[4] Ibid.

[5] See UNDP, "Helen Clark: A Role for Development in Transitional Justice: the Arab Spring and Beyond", 14 November 2011.

marginalization by increasing capacities for agency, building social capital and addressing structural inequalities.[6]

73. It is in this connection that the Special Rapporteur intends to undertake a practice-oriented study on transitional justice aspects that are a precondition and a by-product of the implementation of the Sustainable Development Goals. This undertaking will be based on the foundational work of the previous mandate holder, and comprise the whole wealth of the Goals.

H. Transitional justice and corruption

74. Originally, transitional justice mechanisms have not included addressing violations associated with corruption or other economic crimes, but rather focused on gross violations relating to civil and political rights, such as disappearances, extrajudicial killings, torture and other ill-treatment. Gradually, however, the scope of truth-seeking mechanisms has been expanded to also address violations of economic, social and cultural rights (for example, the Commission for Reception, Truth and Reconciliation in Timor-Leste), economic crimes (the Truth and Reconciliation Commission in Liberia) and grand corruption and the exploitation of national and public resources (the Truth, Justice and Reconciliation Commission of Kenya) (see also A/HRC/24/42, para. 35).

75. The challenge posed by corruption and how to address and fight it during political transitions has come to the fore in the past five to seven years, when corruption emerged in a number of countries as a major grievance alongside joblessness and other violations of social and economic rights, in addition to rampant violations of civil and political rights.

76. The issue of corruption then appeared in a new light, as it was seen as an enabler of various other gross violations: as a means to project economic and political power for private and/or partisan ends, and hence to maintain a culture of oppression. Widespread corruption in the public sector is the result of a serious failure in governance that can develop and then be driven by weaknesses in the rule of law, such as ineffective institutions of accountability and civic participation in conjunction with a State that acts less out of the public interest and more to keep those currently in power in place.

77. Against this background, it becomes evident that a deeper understanding of the issue of corruption will not only shed more light on the preconditions that have allowed gross violations to be committed in the first place but will also help to identify the structural deficiencies that would need to be addressed under the heading of "guarantees of non-recurrence".

78. The Special Rapporteur intends, on the one hand, to dedicate a thorough assessment and conceptual study to the interplay of corruption with gross violations of both civil and political, as well as economic, social and cultural rights; on the other, he will also review recent practices of transitional justice mechanisms aimed at addressing corruption and other economic crimes, and their intersection and collaboration with other State institutions in the field of corruption.

VI. Conclusions and recommendations

79. **Building upon the call made by the previous mandate holder for a comprehensive approach to transitional justice, anchored in standards for the redress of gross violations of human rights and serious violations of international humanitarian law, and the prevention thereof, the Special Rapporteur intends to further develop the work of the mandate, responding to the challenges currently faced in the field of transitional justice and in areas that are interconnected, but rarely coordinated with transitional justice efforts.**

[6] See ibid. See also David Tolbert and Roger Duthie, "Transitional Justice in Countries Emerging from Conflict: A Step Toward Sustainable Peace and Development", ICTJ, 31 May 2018.

80. The Special Rapporteur stresses that the development of the mandate will be undertaken in harmony with the human rights system of which it is part, ensuring cross-fertilization while prioritizing a "pro-persona perspective" as hermeneutical method.

81. Working with all stakeholders in a continuing spirit of open dialogue, the Special Rapporteur commits to provide through his work updated information regarding aspects of each of the four elements of the mandate, including new jurisprudence from relevant international, regional or national entities, and good practices, which he deems important to share.

82. The Special Rapporteur has identified and presents a preliminary outline of the areas of interest that he intends to develop and assess throughout his term as mandate holder. These areas relate to a broad array of issues, such as those at the core of the transitional justice field, cross-cutting questions, and adjacent areas struggling with similar challenges.

83. As an overarching theme, the Special Rapporteur will focus his attention to the fight against impunity and the (re-)establishment of trust as the overarching objectives of transitional justice. He stresses that efforts must be re-directed at increasing the effectiveness of justice procedures, underlining that the concept of justice is not confined to but naturally includes criminal justice.

84. Throughout his mandate, the Special Rapporteur intends to enhance possibilities for sharing experiences and practices at the national and regional levels in relation to the four elements of the mandate, with a human rights-based approach.

85. In his future efforts, in particular in relation to guarantees of non-recurrence, the Special Rapporteur intends to continue to move away from the merely "reactive" approach, centred on institutions, towards a more "pro-active" one, to encompass areas that go beyond those institutions that had directly committed the violations in the first place. In this connection, the Special Rapporteur intends to focus his attention on these broader areas that have preventive potential, especially in the field of formal and informal education.

86. Another key area of engagement relates to the strengthening of the gender perspective in both thematic and country-related work. This will also include a full thematic report in which the Special Rapporteur will thoroughly examine and identify the multi-layered aspects relating to a gender perspective regarding the four elements of the mandate.

87. In relation to non-State actors, the Special Rapporteur intends to concentrate on two issues: first, the impact of armed groups, in particular in weakly institutionalized (post-)conflict settings, and ensuing questions regarding the adequacy of transitional justice mechanisms; and second, an examination of the constructive role that other non-State actors — such as companies (including transnational ones), religious or other faith-based actors, the media and artists — can play to further the goals of transitional justice.

88. In addition, the Special Rapporteur will make efforts to further identify factors relating to the beneficial effects of participation of victims and society at large, looking at both formal and informal ways of participation. He will also consider the intersection of participation and ownership, and related ramifications for transitional justice processes.

89. Regarding development, the Special Rapporteur intends to conduct a practice-oriented study on the aspects of transitional justice that are a precondition to and a by-product of the implementation of the Sustainable Development Goals, on the basis of the foundational work undertaken by the previous mandate holder.

90. **Lastly, the Special Rapporteur intends to make a thorough assessment and conceptual study of the interplay of corruption with gross violations of both civil and political rights, as well as economic, social and cultural rights, in transitional contexts, and will review recent practices of transitional justice mechanisms aiming at addressing corruption and other economic crimes.**